
(1962) 09 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 603 of 1961

Kartar Bus Service Ltd. Jullundur

APPELLANT

Vs

Gurdial Singh and others

RESPONDENT

Date of Decision : 25-09-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 10(i)(c), 19(6), 2(k), 25F

Citation : (1962) 09 P&H CK 0004

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : Ajit Singh Sarhadi, for the Appellant; R. Sachar, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—The Kartar Bus Service Limited, of Jullundur has approached this Court under Articles 226 and 227 of the Constitution assailing the award made by the Labour Court, Jullundur, on 3rd February 1961.

2. According to the Petitioner's allegations the Government of Punjab on 27th July 1930 referred to the Labour Court for adjudication u/s 10(i) (c) (read with the proviso) of the Industrial Disputes Act 1947 the following dispute

Whether retrenchment of Shri Gurdial Singh, Workshop workman, is justified and is in order ? If not, to what relief he is entitled ?

Gurdial Singh is Respondent No. 1 in this Court and the Labour Court is Respondent No. 4. According to the writ petition, the Labour Court framed the following two issues:

(1) Whether the dispute raised in this case is not an industrial dispute ?

(2) Whether the retrenchment of Shri Gurdial Singh, Workshop, workman, is justified and in order? If not, to what relief he is entitled ?

The Labour Court held the dispute in question to be an industrial dispute and Shri Gurdial Singh to be entitled to be reinstated with the result that his retrenchment was ordered with continuity of service and without any change in his position. The Labour Court further ordered that Gurdial Singh should be paid three-fourths of his wages for the period of his alleged forced unemployment from the date of the retrenchment to the actual date of reinstatement.

3. The award is assailed in these proceedings on two grounds but the serious contest is confined to only one ground, namely, that the dispute in question is an individual dispute and not an industrial dispute. The other ground relating to non-compliance with Section 25-F of the Industrial Disputes Act though raised by the Petitioner can be disposed of on the short ground that admittedly Clause (b) of this section was not complied with as no compensation under this provision was paid to the workman concerned. Besides, on the findings of the Labour Court I do not think it is possible for the Petitioner's learned Counsel to successfully find fault with the award on this part of the case.

4. Coming to the question whether the dispute in the instant case is an individual dispute or an industrial dispute, it is desirable, to begin with, to state the conclusions of the Labour Court. This point was decided on 6th December 1960 as a preliminary point. The Court did not place reliance on the affidavits M.W. 5/1 to M.W.5/74 produced by the management because in its opinion they were not legally proved. Shri Kartar Singh, General Manager, who was the only witness who had tried to prove those affidavits, stated that he could not identify the signatures of all the workers whose affidavits have been filed by him. There was also no indication as to who had identified the different deponents before the Oath Commissioner who purported to attest them. The Court also came to the conclusion that there was no proof as to how many workers in all there were in the Kartar Bus Service Limited. Shri Kartar Singh undoubtedly stated that they were ninety but since the attendance register was not produced in support of this assertion, it appears that the Labour Court did not feel convinced with this assertion. It may be mentioned here that the General Manager was directed to produce the attendance register but he did not comply with this direction. The Labour Court considered those affidavits and observed that it was nowhere stated by the deponents that they did not espouse the cause of Gurdial Singh, the only assertion made by them being that they were members of the all Kartar Bus Workers Union and that they only espoused the cause of the members of that Union. Nothing was stated by them in connection with the reference before the Labour Court. As against this, according to the order of the Labour Court dated 6th December 1960, some of the workers had filed affidavits specifically asserting that the deponents espoused or supported the cause of the worker concerned in the reference.

5. Before me, Shri Ajit Singh Sarhadi, the learned Counsel for the Kartar Bus Service Limited, laid stress on the contention that there were ninety employees of the the Petitioner company and that out of them seventy six persons had

affirmed sometime in August, 1960, that they did not espouse the cause of any outsider and that they were the members of the All Kartar Bus Service of which Gurdial Singh was not a member. It has also been emphasised that the affidavit of twenty six persons filed by Gurdial Singh are of a later date with the result that those affidavits do not disclose their support for Gurdial Singh at the time the dispute arose or was referred. The learned Counsel has very forcefully urged that in order to convert an individual workman's dispute with the management into an industrial dispute it must be shown that at the time of the reference such workman had the support of a majority of his co-workmen. The reference in the instant case, according to the counsel, was made sometime in July, 1960. In support of his contention Shri Sarhadi has to begin with, relied on a decision of the Supreme Court in *Bombay Union of Journalists and Ors. v. The "Hindu"*, Bombay (1961) 2 L.L.J 436. It was held there that the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make a common cause with the individual workman. In that case the alleged wrongful termination of employment of the workman concerned was held to acquire the character of an industrial dispute only if it was proved that it was, before its reference, supported by the union of the employees of the "Hindu", Bombay or by an appreciable number of its employees. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute was also held to apply to such cases. It was further observed there that the test for ascertaining in each case whether an individual dispute had acquired the character of an industrial dispute is whether at the date of the reference the dispute was taken up or supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. The next decision on which reliance has been placed on behalf of the Petitioner is a decision of the Madras High Court in *Visalakshi Mills Ltd. v. Labour Court, Madurai etc.* (1960) 24 L.J. 93. From this decision, support is sought for the proposition that a substantial number of workmen must support the cause of the aggrieved workman in order to convert it into an industrial dispute. A decision of the Andhra Pradesh High Court in *Sri Kripa Printing Press v. Labour Court, and Anr.* (1960) 1 L.L.J 53, has been quoted for the proposition that it is always for the workman to show that his cause has been sponsored by his union or by a number of workmen of his class in order to convert the individual dispute into an industrial dispute. *J.K. Cotton Manufacturers Ltd., Kanpur Vs. U.P. Government and Others*, has also been relied upon in support of the attack on the impugned award. There, V.D. Bhargava J. held that if the services of an employee are terminated and there is no apprehension of any strike or lock-out in that concern, then the machinery of the Industrial Disputes Act does not come into operation and it is only when the services are terminated which creates resentment in the majority of the workmen that there would be a danger of strike or lock-out or of violence and it is then that there would be a necessity to bring into operation the machinery of the Industrial

Disputes Act. On the other hand, if on the termination of the services of an employee, one or two workmen out of hundreds are dissatisfied, then it does not create an industrial dispute. *South Bihar Sugar Mills Ltd. Vs. The State of Bihar and Others*, ., has also been cited for the proposition that the expression "Industrial dispute" must be construed to mean a dispute which, though it may originate in an action with regard to an individual workman, has developed into a dispute in which the majority of the workmen of the establishment are interested. *Ahmad Ali Ansari and Ors. v. Labour Court and Ors.* (1962) 1 L.L.J. 99, a decision by Ramaswami C.J. of the Patna High Court has also been quoted where it was held that in an individual dispute of one or more of the workmen, with which the rest of the workmen or a substantial number of them are not at all concerned and interested and when this cause has not been taken up by the trade union concerned, there is no possibility of any industrial strife or unrest and there is also no possibility of good relations between employers and employees becoming insecure, such a dispute is not an industrial dispute. The last decision relied upon is *Dr. Tilak Raj Chadha v. The Chief Commissioner, Delhi and Ors.* (1961) 63 P.L.R 327 for the proposition that a finding based on no evidence can be assailed under Article 226 of the Constitution does not seem to be of much assistance in the present case.

6. On behalf of the Respondents, on the other had, Shri Sachar has submitted that the reference was made in July, 1960, and that it was before the tribunal that the plea of the dispute being merely an individual dispute with a single workman was taken and, therefore, it was only at that stage that evidence about the workmen espousing the cause of Gurdial Singh could be adduced. The counsel has contended that the majority rule is now an exploded theory and that if a number of workmen espouse the cause of an individual co-workman, then the dispute assumes the character and colour of an industrial dispute. He has sought support for this contention from *Workmen of Rohtak General Transport Company v. Rohtak General Transport Company* (1962) 1 L.L.J 634 and has also attempted to distinguish the decisions relied upon by Shri Sarhadi by submitting that in those cases, unlike the instant case, no other workman had supported the reference. Reliance has further been placed on *The Associated Cement Companies Ltd. Vs. Their Workmen*, for meeting the Petitioner's contention based on the majority rule. In the last cited case paragraph 10 of the judgment at page 781 has particularly been relied upon.

7. Now, though the language of the definition of the expression "Industrial dispute", as contained in Section 2(k) of the Industrial Disputes Act, does, according to the rule of construction that words in the plural include the singular, seem to comprehend even a dispute between an employer and a single workman, the question is, however, not *res integra*. After considering the scheme of the legislation in question and the purpose sought to be achieved by it, the Supreme Court has more than once ruled that the statute contemplates only settlement of disputes involving the rights of workmen as a class and not disputes which merely touch individual rights of a single workman. The policy of

this legislation is obviously to promote measures of security, to preserve good relations between employer and employees and to prevent industrial unrest ; it has for its objective, achievement of a proper balance between and harmonious working of capital and labour, the basic need of a truly welfare State which is being rapidly industrialised. In order, therefore, to attract the applicability of this Act, the dispute must either involve a group of workmen or the cause of a single workman must be taken up as a common cause by the workmen as a body or by a considerable section or a large number of them. In other words, the dispute must be such as affects the workmen as a class. See Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, , The The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., , The Associated Cement Companies Ltd. v. Their Workmen (1960) 2 S.C.R. 157, and Bombay Union of Journalists and Ors. v. The "Hindu", Bombay etc (1961) 2 L.L.J 436 According to the Associated Cement Companies" case (1960) 2 S.C.R. 157, the group espousing the cause of an individual work- man may even be a minority group and it would be enough to constitute an industrial dispute. Gajendragadkar J., speaking for the Court in that decision observed thus:-

We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the Appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference of an Industrial dispute u/s 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred for adjudication u/s 10.

8. Now, if this be the position, then it would appear to be extremely difficult to lay down any hard and fast rule as to the number of workmen whose association would convert an individual dispute into an industrial dispute; the question would, in my opinion, clearly depend on the nature of the dispute and the particular facts of a given case; it must, however, be clearly suggested that the dispute affects the workmen as a class.

9. And then, the individual dispute must necessarily assume the character of an industrial dispute at the time of its reference, for, it is only then that a valid reference can be made by the Government. As held in the case of the "Hindu", Bombay¹, the validity of a reference has to be judged on the facts as they exist on the date of the reference. To reproduce with gratituted the words of Shah J., who spoke for the Bench there, "in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen." Just as a subsequent withdrawal of support would not take away the jurisdiction of an industrial tribunal, on the same reasoning subsequent support also cannot convert what was an individual dispute at the time of reference into an industrial

dispute. This appears to me to be the true legal position as laid down by the Supreme Court.

10. Coming to the case in hand, it appears to me that the management on whom the onus of the issue that the dispute raised is not an industrial dispute lay did not advert to this aspect of the matter and the attention of the Labour Court was not drawn to the precise question as to whether or not at the time of the reference a large number of workmen were espousing the cause of Gurdial Singh. The writ petition filed in this Court also does not seem to keep in the forefront this aspect and indeed, it is difficult to spell out this precise attack against the decision of the Labour Court dated 6th December, 1980. The principal ground which appears to have been kept in the forefront by the Petitioner is that a majority of the workmen of the Petitioners establishment have disassociated themselves from the cause of Gurdial Singh without adverting to the point of time and this has been sought to be supported by reference to the affidavits filed on behalf of the management in the Labour Court.

11. Shri Sarhadi has, however, in his arguments laid great emphasis on the point that at the time of reference the dispute in question was in fact not espoused by a large number of co-workmen so as to impart to the individual dispute the character of an industrial dispute, and that the entire record is bare of material which would suggest that the cause of the workman in question was ever taken up by his co-workmen. It has been urged with considerable force that it was incumbent on the Labour Court to have considered this question and to have applied the law applicable, for on the determination of this question depended the Court's jurisdiction to adjudicate on the dispute.

12. I am inclined to agree that the Labour Court would have been well advised to consider the matter from the point of view pressed by Shri Sarhadi, for, this is the correct legal position as settled by the Supreme Court in the case of "Hindu", Bombay. The difficulty, however, which confronts the Petitioner in this case is the narrow scope of writ proceedings, for, they cannot be equated with appeals and, therefore, cannot be considered to amount to a re-hearing. A point not properly raised and canvassed before the lower tribunal can scarcely be permitted to be raised for the first time on writ side, particularly when it requires going into facts and circumstances of the controversy. I am, therefore, constrained to decline to go into the point that at the time of reference the supporting co-workmen of the Respondent were not espousing his cause.

13. Besides, the inability of the Labour Court to find the real number of workers of the Kartar Bus Service Ltd., to be ninety must be held to be binding and unassailable as it has not been shown to be tainted by any such patent and gross illegality as would justify interference by this Court on the writ side. The Labour Court also found it difficult to hold that the affidavits filed by the management were those of the workers in the concern. It has further observed that in the affidavits nothing has been stated about the instant reference and that the declaration that the deponents espouse only the cause of the members of the All

Kartar Bus Workers Union does not unequivocally show that they do not espouse Gurdial Singh's cause in the present reference. Whether this conclusion is strictly accurate or whether this Court dealing with the matter on original side in the first instance would have itself arrived at those conclusions is not the test to be applied. These conclusions are not shown to be tainted by any such serious infirmity as would justify exercise of the discretionary power of a high prerogative writ for re-evaluating the material on which these conclusions are based.

14. For all the foregoing reasons, I think the present is not a fit case in which this Court should exercise its discretionary power of a high prerogative writ under Article 226 of the Constitution. I accordingly dismiss the writ petition, but without any order as to costs.