
(1968) 01 DEL CK 0014

In the Delhi High Court

Kaul (S.N.)

APPELLANT

Vs

National Productivity Council and Another

RESPONDENT

Date of Decision : 23-01-1968

Acts Referred:

Citation : (1968) 2 LLJ 85

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Judgement

T.V.R. Tatachari, J.—This is a writ petition filed under Article 276 of the Constitution of India for this issue of a writ of certiorari quashing the award of the labour court, Delhi, in Industrial Dispute No. F. 53 of 1966.

2. For a proper appreciation of the contentions put forward on behalf of the petitioner and the respondents, it is necessary to state the material facts which have given rise to this writ petition. The petitioner, S. N. Kaul, was taken in the service of respondent 1, the management of the National Productivity Council, 38, Golf Links, New Delhi, on 5 December 1960, as press operator. According to the petitioner, his services were arbitrarily and illegally terminated by respondent 1 on 9 March 1964. It is stated in the writ petition that the petitioner approached the Chairman of respondent 1, on several occasion, and that he was finally informed on 28 November 1965, that his case could not be considered any more by the Council. He, thereafter, sent a notice to respondent 1. He then Initiated conciliation proceedings which resulted in a notification, No. F. 26 (152)/66-Lab., dated 8 June 1966, whereby the Delhi Administration referred the individual depute of the petitioner to the labour court for adjudication. The terms of reference were as under:

Whether the termination of services of S. N. Kaul is unlawful and unjustified and, if BO. to what relief is the workman entitled ? 3. In the proceedings before the labour court, respondent 1 raised a preliminary objection that the dispute was not an industrial dispute inasmuch as the case of the workman was not espoused by the other workmen of respondent 1 Council, that the provisions of S 2A of the

Industrial Disputes Act did not apply to the dispute in question inasmuch as the cause of action arose when the petitioner's services were terminated, and the provision of the Industrial Disputes (Amendment) Act, 1965 (35 of 1965), which came into force on 1 December 1965, and by which Section 2A was inserted in the Industrial Disputes Act, 1947, had no retrospective operation, and that consequently the labour court had no jurisdiction to entertain the dispute. The labour court heard the preliminary objection as a preliminary issue which was framed as follows:

Whether the dispute is an industrial disputes or not ? The labour court passed an award on 26 October 1966, on the above preliminary objection, holding as follows:

In view of this, the dispute had to be taken up as the dispute of the class and not as the dispute of a single workman. It has been argued that the raising of a dispute is a matter of mere procedural formalities. But it is not that. It is the right of the workmen combined together by which they make the dispute their own and as such a single workman has no right to raise the dispute. It was a vested right and not a matter of procedure alone. In view of this the amendment by Act 35 of 1965 cannot be held to be retrospective. It is only prospective and persons dismissed or discharged after the coming into force of the Act can only be benefited by the same. If the intention of legislature was to benefit those workers who have been dismissed earlier, the language of the section would have been different. In the light of Section 2A above, as there was no espousal, the dispute does not acquire the status of an industrial dispute, and the Court has no Jurisdiction to determine the case. As such I hold that the Court has no jurisdiction, and award accordingly. It is to quash the said award that the present writ petition has been filed.

4. The above extract from the award of the labour court shows that the labour court took the view that the raising of dispute under the Industrial Disputes Act was a collective right vested in the workmen combined together, and not a matter of procedure alone, that, Therefore, the provisions in Section 2A of the Act inserted by amendment by Act 35 of 1965, in the absence of any provision, express or necessarily implied, in the said section showing that the provisions in the section should have retrospective effect, could be regarded only as prospective and not retrospective, and that consequently an individual dispute which arose prior to 1 December 1965 could not be regarded as an " Industrial dispute " by reason of the provisions in Section 2A, and could not be referred as such to the labour court.

5. Sri M. K. Ramamurthi, the learned Counsel for the petitioner, stated before me, that he did not propose to contend that the provisions in Section 2A are retrospective, but that he would contend that, on an interpretation of the language of the said section, it should be held that in the present case, though the dispute raised by the petitioner was an individual dispute prior to 1 December 1965, it became an " industrial dispute " on and from 1 December

1965 by virtue of the provisions of Section 2A of the Act which came into force on the said date, that for the validity of a reference u/s 10 of the Act, the crucial date is the date on which the reference is made, that since in the present case the individual dispute of the petitioner became an "industrial dispute" on and after 1 December 1965, there was an "industrial dispute" on 3 June 1963, the date on which the reference in question was made to the labour court by the Delhi Administration, and that, Therefore, the reference was quite valid in law, and the labour court had jurisdiction to entertain and determine the reference.

6. Prior to the insertion of Section 2A, the question whether a dispute simpliciter between an employer and a workman could be an "industrial dispute" as defined in Section 2(k) of the Industrial Disputes Act 14 of 1947, was left open by the Supreme Court in *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, . In that case, however, the Supreme Court, dealing with the provisions in Sections 2(12) and 16 of the Central Provinces and Berar Industrial Disputes Settlement Act 23 of 1947, held that the said Act covers the ground occupied by both the Industrial Employment (Standing Orders) Act 20 of 1946 and the Industrial Disputes Act 14 of 1947, and that, Therefore, it would be proper to interpret the expression "Industrial dispute" in the Central Provinces and Berar Industrial Disputes Settlement Act 23 of 1947 in a sense wider than that it bears in the Industrial Disputes Act 14 of 1947 so as to cover not only the disputes of workmen as a class but also their individual disputes.

7. But, in the subsequent case in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, , the aforesaid question arose directly for consideration under the provisions of the Uttar Pradesh Industrial Disputes Act 28 of 1947. On a consideration of the relevant provisions of the said Uttar Pradesh Act, the Central Act, and the rules framed there under, the Supreme Court held that the dispute of an individual workman which is taken up by the other workmen or by any union, does not fall within the definition of an industrial dispute as given in the said Uttar Pradesh Act or in Section 2(k) of the Central Act, viz., the Industrial Disputes Act 14 of 1947.

8. It was in that state of the law that the Industrial Disputes (Amendment) Act, 1965 (85 of 1965), was passed inserting Section 2A in the main Act. Section 2A runs as under:

2A Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. Where an 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 nor any union of workmen is a party to the dispute. 9. This section came into force on 1 December 1965. By this section it is provided that in the case of a dispute or difference between an individual workman and his employer connected with or arising out of a discharge, dismissal, retrenchment or termination of service in

any other manner, should be deemed to be an " Industrial dispute " even though no other workman or any union of workmen is a party to the said dispute. The object of the section is clearly to nullify the effect of the interpretation of the term "Industrial dispute" by the Supreme Court as limited to a dispute of workmen as a class and not to a dispute by an individual workman.

10. But the question for determination in the present case is as to whether an individual dispute of a workman which arose before Section 2A came into force on 1 December 1965, should also be treated as an "industrial dispute " by virtue of the provisions in Section 2A,

11. Sri N. C. Chatterjee, the learned Counsel for the respondents, contended that the words, " discharges," " dismisses," " retrenches " and "otherwise terminates" used in Section 2A show that the said discharge, dismissal, retrenchment or termination of services should have taken place on or after the date on which the provisions in Section 2A came into force. It is true that grammatically the aforesaid words refer to a discharge, dismissal, retrenchment or termination of services on or after the date on which the section came into force. The said words, however in my opinion, also include a discharge or dismissal or retrenchment or termination of service which existed on the date on which the section came into force. Where a discharge or dismissal or retrenchment or termination of services took place prior to the date on which the section came into force and continued to exist on the said date and there-after, it would fall within the provisions of Section 2A. In the present case, the services of the petitioner were terminated on 9 March 1964. He disputes the same and the termination of services as well as the dispute continued to exist on 1 December 1965 when Section 2A came into force, and thus became an "Industrial dispute" on 1 December 1965 by virtue of the provisions in Section 2A of the Act.

12. I am fortified in this view by the reasoning adopted by Horries, C. J., in *Birla Brothers. Ltd. v. Modak-I.L.R. (1948) Cal. 208*, wherein the learned Chief Justice held that where a dispute which originated before the Industrial Disputes Act came into force but was in existence on the date when that Act became law, the Act applied to the dispute since it was in existence and continuing on that date, and no question of giving a retrospective effect to the Act arose. The learned Chief Justice observed at p. 221 as follows:

In my judgment, the Act of 1947 clearly applies to the present dispute without any attention arising of giving the Act any retrospective effect. It is true the dispute arose before the Act was passed, but on 1 April 1947, when the Act came into force, the dispute was in existence and continuing. The employees were on strike and the strike actually continued until 19 May, that is, five days after the Government made the order referring the dispute to arbitration. In my judgment, the Act must apply to any dispute existing after it came into force, no matter when that dispute commenced. There is nothing in the Act to suggest that it should apply only to disputes which originated after the passing of the Act. On the contrary, the opening words of Section 10 of the Act make it clear that the

Act would apply to all disputes existing when the Act came into force. The opening words of Section 10(1) are:

If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing It seems to me that three words make it abundantly clear that the Act applies to any industrial dispute existing when the Act came into force and, Therefore, the Act applies to this dispute.

13. The above passage and the reasoning therein were quoted with approval by the Supreme Court in *Jahiruddin and Ors. v. K.D. Rathi Factory Manager, Model Mills* 1966 I L.L.J. 480.

14. Thus, the termination of the services of the petitioner, and the dispute between him and his employer were existing and continuing on 1 December 1965 when the provisions in Section 2A came into force, and, Therefore, the said dispute became an "industrial dispute" on that date by virtue of the provisions in Section 2A. The said "industrial dispute" continued to exist and was existing on 8 June 1966 when the Delhi Administration referred the dispute to the labour court for adjudication under S 10 of the Industrial Disputes Act. Section 10(1), as amended by Act 18 of 1962, read as under:

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

(a) * * * ; or (b) * * * ; or (c) refer the dispute * * * labour court for adjudication; or (d) * * * In a case, which arose prior to the insertion of Section 2A in the Act, viz., in *The Bombay Union of Journalists and Others Vs. The "Hindu"*, Bombay and Another, , the Supreme Court while reiterating the view taken in the earlier decision in *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, that a dispute between the employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the union or by a number of workmen, held further that:

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 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. 15. Therefore, for a valid reference u/s 10 of the Industrial Disputes Act, an Industrial dispute should be in existence on the date of the reference. As pointed out by me above, the Individual dispute between the petitioner and his employer became an "industrial dispute" on 1 December 1965 by reason of the provisions in Section 2A of the Act, and the said "industrial dispute" was existing on 8 June 1966, when the reference was made by the Delhi Administration to the labour court for adjudication, and consequently the said reference was quite valid in law, and the labour court had, Therefore, jurisdiction to entertain the reference and adjudicate upon it. In this view, the question as to whether Section 2A has retrospective effect or not, does not arise.

16. For the above reasons, I allow the writ petition, quash the award of the labour court, Delhi, dated 26 October 1966, in Industrial Dispute No. F. E8 of 1966, and direct the said labour court to proceed with the reference made to it by the Delhi Administration. In the circumstances of the case, I make no order as to costs.