

(1956) 01 PAT CK 0025
In the Patna High Court
Case No : Misc. Judicial Case No. 254 of 1952

K.H. Gandhi

APPELLANT

Vs

R.N.P. Sinha and Another

RESPONDENT

Date of Decision : 09-01-1956

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(1), 2

Citation : AIR 1956 Patna 320

Hon'ble Judges : Sinha, J; Rai, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; Rai Parasnath and Jamuna Prasad Chaudhury, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—This is an application by the petitioner, Manager of Messrs B.A. & Brothers, a firm having its head office at 2 and 3 Clive Row, Calcutta, which sells and supplies patent medicines and other medicinal preparations, and the petitioner is in sole and exclusive charge of the Patna Branch of the said firm. On the 5th of February, 1948, petitioner 2 had been appointed as a clerk in the office of the said branch at Patna on a salary of Rs. 50/- per month.

The services of the said clerk had to be dispensed with with effect from the 26th September, 1951, when he was given full salary for the month of September as also one month's further salary in lieu of notice, and the said clerk after getting the payment granted a receipt as token of final settlement. On the 22nd of October, 1951, the said clerk, opposite party 2, filed an application before the Assistant Labour Commissioner, Bihar, Patna, requesting him to look into the matter and do the needful.

On the 15th of March, 1952, a notice was issued to Messrs B. A. & Brothers, Patna, from the office of the Assistant Commissioner of Labour, Patna, informing him that the Conciliation Officer and Assistant Commissioner of Labour, Patna,

would. hold a conciliation proceedings on the 31st March, 1952, at 3 p.m. in his office and requesting the firm to send a representative to participate in the proceeding. On the 31st of March, 1952, it is alleged that the petitioner appeared before the officer concerned and explained to him the circumstances attending the dismissal of opposite party No. 2, and also pointed out that the so-called dispute was no dispute at all and much less an industrial dispute.

On the 17/18th June, 1952, a letter sent from the office of the Assistant Commissioner of Labour, Patna, to the Manager, namely, the petitioner on the subject of wrongful dismissal of Sri Ram Briksha Singh, opposite party No. 2, intimating that on the 23rd of June, 1952, a conciliation proceeding would be held u/s 12, Industrial Disputes Act, 1947, (Act XIV of 1947) at 11 a.m. in his office at Patna, and the Manager was requested to send his accredited representative with all relevant papers and with necessary authority on his behalf. The letter is signed by an officer describing himself as Conciliation Officer and Labour Officer, Patna on the 18th of June, 1952.

In pursuance to this letter conciliation proceedings were held on the 23rd of June, 1952, and after some discussion the conciliation proceeding was adjourned to the 10th of July, 1952. The petitioner filed the present application on the 30th of June, 1952, which was put up for admission on the 8th of July, 1952, and a rule was issued upon the opposite party to show cause as to why the aforesaid conciliation proceeding should not be quashed under the provisions of Article 226 of the Constitution.

2. Mr. Government Pleader appears to oppose the rule on behalf of opposite party no. 1, the Conciliation Officer and Labour Officer, Patna Division, Labour Department, Patna, and Mr. Jamuna Prasad Chaudhury has appeared on behalf of opposite party no. 2. Conciliation proceedings are held under the provisions of Section 12, Industrial Disputes Act, 1947 (Act XIV of 1947) Section 12(1) of the Act reads as follows:--

"Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 23 has been given, shall, hold conciliation proceedings in the prescribed manner."

It is apparent from a perusal of this Sub-section (1) that a conciliation officer has jurisdiction to start the proceeding only where an industrial dispute exists or is apprehended. Section 2(k) "of the Act defines "industrial dispute", and this Court has decided as to the proper interpretation of Section 2(k) of the Act, and it has been held in the case of *New India Assurance Co. v. Central Govt. Industrial Tribunal, Dhanbad* 1953 Pat 321 (AIR V 40) (A) that

""industrial dispute" as defined in Section 2(k) must be construed to mean not a dispute between an individual workman and the management but 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 in the establishment are interested."

In the present case there is no material to hold that, apart from the opposite party making a request to the Assistant Commissioner of Labour, there was any industrial dispute within the meaning of Section 2(k) of the Act. He was dismissed and was given the full pay of the month in which he was dismissed plus the pay of a month in lieu of notice. He accepted the payment and gave receipt in token of his acceptance. There was no dispute at all and much less a dispute within the meaning of Section 2(k) of the Act as interpreted by this Court in the aforesaid case.

It is needless to point out that the jurisdiction of the conciliation officer u/s 12 is founded upon existence or apprehension of an industrial dispute. If there is no industrial dispute, the conciliation officer has no jurisdiction to initiate a proceeding under the Industrial Disputes Act. Mr. Government Pleader submitted that it should have been pointed out to the conciliation officer by the petitioner that there was no such dispute which could be termed as an "industrial dispute" within the meaning of Section 2(k) of the Act.

The petitioner has stated in his application that he did make such statement before the conciliation officer telling him that there was no dispute, and certainly there was no "industrial dispute". In my view, however, it is for the conciliation officer Himself to find out whether there is any such industrial dispute as defined in Section 2(k) of the Act to enable him to start a conciliation proceeding under the Act, and if it is found that there was no "industrial dispute" such proceeding must be quashed as being without jurisdiction.

The Act has been brought into existence with a view to dispose of all "industrial disputes" with as much speed as possible in the interest of both the management and the workmen. It is, therefore necessary that proceedings under the Act could be started with utmost circumspection so that unnecessary harassment may not be caused to the management and public time wasted in starting proceedings without careful ascertainment of the facts on which the jurisdiction is founded. In my judgment, therefore, the petitioner has made out a case for quashing the conciliation proceeding started by opposite party no. 1 as being without jurisdiction.

3. I would, therefore, allow the application and direct that a writ in the nature of certiorari should issue setting aside all proceedings for conciliation started by opposite party no. 1 in the present case. The petitioner is entitled to his costs and I assess the hearing fee at Rs. 64/- payable by opposite party no. 1.

Rai, J.

4. I agree.