

**(1965) 02 P&H CK 0024**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Letters Patent Appeal No. 28-D of 1962

Khadi Gramodyog Bhawan Workers' Union

APPELLANT

Vs

E. Krishnamurthy, Industrial Tribunal and Another

RESPONDENT

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**Date of Decision :** 08-02-1965

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2(K)

**Citation :** AIR 1966 P&H 173 : (1966) 2 LLJ 261

**Hon'ble Judges :** S.K. Kapur, J;D.K. Mahajan, J

**Bench :** Division Bench

**Advocate :** Hari Shankar, for the Appellant; Anand Parkash and Madan Lal Gupta, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.K. Kapur, J.—This Letters Patent appeal under Clause 10 is directed against the order of a learned Single Judge dated the 6th November, 1961, Reported in Khadi Gramodyog Bhawan Workers Union Vs. E. Krishna Murti and Another, . The arguments in the appeal have been confined only to the dismissal of Lapoor Chand.

2. The facts relevant for the purposes of this appeal are that one Lapoor Chand was employed by Khadi Gramodyog Bhawan and his services were terminated on 1st September 1958. According to the appellant the cause of Lapoor Chand was taken up by Khadi Gramodyog Bhawan Workers Union (hereinafter referred to as the Union) and a joint statement of claim by the management of Khadi Gramodyog Bhawan, New Delhi and the said Union representing Lapoor Chand and two other employees was filed with the Conciliation Officer. On 1st September 1959 the dispute between the management of Khadi Gramodyog Bhawan, New Delhi, and its workmen Anayat Ali, Lapoor Chand and Jodh Singh was referred to the Tribunal for adjudication under Sections 10(1)(c) and 12(5) of the Industrial Disputes Act 1947. Lapoor Chand became member of the Union on the 22nd of October, 1958, that is after the date of his dismissal. The Tribunal

by its award dated the 19th November 1959 inter alia held that since Lapoor. Chand had become a member of the Union in October, 1958, and his services had been terminated on 1st September 1958 that Union could not espouse the cause of the workman and the dispute in the circumstances was not an industrial dispute. The learned Single Judge upheld the view taken by the Tribunal.

3. The learned counsel for the appellant submits that in ascertaining whether the dispute was an individual dispute or had acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was supported by a Union of workmen or by an appreciable number of employees of the establishment in which the dismissed workman was formerly employed. According to the learned counsel the community of interest must exist, only on the date of reference and need not exist on the date of dismissal. Submits the learned counsel that even if La-poor Chand became member of the Union after his dismissal the Union could still take up the cause of the workman at any time before the order of reference is made and that would be enough to make the dispute an industrial dispute. The learned counsel relies for that proposition on the *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, . In this case, their Lordships of the Supreme Court held that " in ascertaining whether an individual dispute had acquired the character of an industrial dispute the test was 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", it was observed that --

"In the present case members of the Union who were not workmen of the employers against whom the dispute was sought to be raised, seek by supporting the dispute to convert what is prima facie an Individual dispute into an industrial dispute. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view applies to this class of cases also; persons who are not employees of the same employers cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. The mere support to his cause by the Bombay Union of Journalists cannot, therefore, assist the claim of Salivateeswaran so as to convert it into an industrial dispute."

The learned counsel seeks to distinguish the decisions in *Padarthy Ratnam and Company Vs. Industrial Tribunal and Others*, and *Shamsuddin Vs. State of Kerala and Others*, on the ground that in both cases the Union which took up the cause of the employee concerned was not a Union of the employees of the same establishment in which the workman concerned was working. He submits that where a Union of the workmen of the same employer takes up the cause of the employees concerned, at any time before the date of reference the requisite community of interest to convert a dispute into an industrial dispute is created, even though the employee was not a member of the said Union on the date of dismissal. A distinction must, according to the learned counsel, be drawn

between the cases where the cause of the employee is supported by a Union of workmen of the same employer and where it is taken up by an outside Union. In the former case it is not necessary that the employee should be a member on the date of dismissal and it may be only in the latter type of cases that membership on the date of dismissal can be insisted upon. He further submits that according to the test laid down by the Supreme Court is "the The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, the only requirement for creating a community of interest is that persons who seek to support the cause of workman must themselves be directly and substantially interested in the dispute and a Union of the workmen of the same establishment would always be directly interested in the dispute whether or not the workman concerned is a member on the date of dismissal. The ratio of Shamsuddin Vs. State of Kerala and Others, and Padarthy Ratnam and Company Vs. Industrial Tribunal and Others, according to the learned counsel, is that a Union of another establishment cannot be interested in the dispute unless the employee concerned is a member of such a Union on the date of dismissal. He further contends that in view of the decision in "the The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, the relevant date has to be taken as the date of the reference and not the date of dismissal.

4. The learned counsel for the respondents on the other hand submits that a dispute initially an individual dispute cannot become an industrial dispute unless a Union of which the employee concerned is a member on the date of dismissal or a substantial number of employees of the establishment in which the dismissed employee was working support the cause of the employee. He places strong reliance on Padarthy Ratnam and Company Vs. Industrial Tribunal and Others, Shamsuddin Vs. State of Kerala and Others, and Girson Textile Mills v. Om Parkash 1960 I LJ 48 (Punj) (March Issue) and submits that in the last mentioned case a Bench of this Court has taken the view sought to be put forth by him. In Girson Textile Mills" case 1960 I LJ 48 (Punj) a similar objection was taken, and it was sought to be met by an argument that a Union had espoused the cause of the workman. This Court held that either the Union of the workmen of the establishment concerned or a number of the workers of the establishment should support the cause of the workmen and only then can an individual dispute become an industrial dispute and the fact that the dispute was taken up by the District Textile Workers Union, which was not a Union of the workers of the establishment concerned, could not convert the dispute into an industrial dispute because Om Parkash was not a member of the said Union on the date of his dismissal and became a member later Dulat J. observed:

"The only thing that could convert it into an industrial dispute would be the taking up of the grievance by the workers of the establishment. It cannot be said that this ever happened. All that is shown is that another Union not of the establishment in question, decided to represent the grievance, but there is nothing whatever to conclude that this workers" Union was effectively representing the workers of the establishment in this particular matter".

This aspect of the matter does not appear to have been presented before the learned Single Judge. Perusal of the judgment shows that the only contentions then raised were (1) that the dispute became an industrial dispute because it was taken up by a Union and (2) that a dispute which is connected with an individual can also fall under the definition of industrial dispute in Section 2(k) of the Industrial Disputes Act. The second contention has not been pressed before us. We will, therefore, confine ourselves only to the contention which was raised before the learned Single Judge. We shall be travelling beyond the scope of Letters Patent appeal in case we permit new contentions to be raised. The only contention we, therefore, propose to examine is whether or not the dispute though an individual dispute at its inception became an industrial dispute because it was taken up by a Union, at a subsequent stage. There is nothing in the award to show that the dispute was supported by the Union before the reference was made. The learned counsel for the appellant submits that a joint statement of claim was sent to the Conciliation Officer which shows that the cause of the individual workman was taken up by the Union. In paragraphs 12 and 13 of the petition it has been alleged that the petitioner Union took up the cause of Lapoor Chand and a joint statement of claim of all the three workers was submitted by the Union to the Conciliation Officer. In the affidavit filed by Ram Nath Tandon, Manager of respondent No. 2, it has been stated in paragraph 13 that "one Ramesh Chand purporting to act on behalf of the Union did write to the Conciliation Officer about the case of Inayat Ali. It is, however, not admitted that he had any authority to act on behalf of the Union." It follows that this allegation of fact has been denied by the respondent. In view of this controversy it is not open to us to decide whether a joint statement of claim was filed as alleged by the appellant or not. Consequently there is nothing to show that the cause of the individual workman was taken up by a Union before the date of reference. In the absence of any finding even by the Tribunal we will not venture to give one for the first time in the Letters Patent appeal.

5. Coming to the only point which appears to have been raised before the learned Single Judge, namely, the dispute became an industrial dispute because it was taken up by Union, we are in agreement with the view expressed by the learned Single Judge that an individual dispute can become an industrial dispute only if the cause of an individual worker is espoused by a Union of which such worker was a member on the date of dismissal. The fact that he became a member after the dismissal will be of no avail to him. We are in agreement with the decision in Padarthy Ratnam and Company Vs. Industrial Tribunal and Others, that membership of a Union which can entitle it to espouse the cause of a workman must be one anterior to the date of the dismissal and not subsequent to it. The same view has already been taken by this Court in Girson Textile Mills" case 1960 I LJ 48 (Punj). We might make it clear that in view of the limited scope of the arguments raised before the learned Single Judge we are expressing no opinion as to whether it will make any difference if the cause had been taken up by a Union of the workmen of the establishment in which the dismissed

employee was employed. In the result the appeal fails and is dismissed but there will be no order as to costs.

D.K. Mahajan, J.

6. I agree.