

(1972) 09 OHC CK 0001
In the Orissa High Court

Kishore Chandra Misra

APPELLANT

Vs

General Manager, Hindusthan Aeronautics Limited and Others

RESPONDENT

Date of Decision : 13-09-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1973) 1 LLJ 557

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Judgement

R.N. Misra, J.—The petitioner has asked for a writ of certiorari to annul a clause of the standing orders of the Hindusthan Aeronautics Limited, Koraput division, to declare that the order of discharge of the petitioner from employment of the said company is illegal, invalid and without jurisdiction and for an order of reinstatement with a direction to give the petitioner continuity of his service.

2. The Hindusthan Aeronautics Limited is a Government company under the provisions of the Indian Companies Act, 1956, and is a Government of India undertaking. The Koraput division of the company is located at Sunabeda in that district. The petitioner came to be appointed as a clerk on a salary of Rs, 130-8-210 in June, 1965. He obtained certain promotions while being in the employment of the company and came to be confirmed in his appointment. Certain proceedings were taken against the petitioner on allegation of insubordination, misconduct and disorderly behaviour. In exercise of powers under Clause 28 of the standing orders, the general manager of the company terminated the petitioner's service on 2nd January, 1971, and directed that the petitioner shall be paid three months' basic pay in lieu of notice as per Clause 5 of the terms of appointment. The petitioner has asked this Court to quash the order of termination and for other reliefs as already indicated above.

3. The employer has entered contest and raises a preliminary objection to the maintain-ability of the writ petition. It is stated that soon after the filing of the writ application, the petitioner has also raised an industrial dispute for the self-

same matter and conciliation having failed, the failure report is already before the appropriate Government to be dealt with under the provisions of the Industrial Disputes Act, 1947. It is further alleged that the propriety of Clause 28 of the standing orders is also being disputed before the appropriate authority under the Industrial Employment (Standing Orders) Act of 1946, and consideration is pending as to whether the same should be revised. It is also contended that the certification of the standing orders was made after due notice to the employees and there was a provision for an appeal under that Act. The remedy having not been availed of, the question should not be permitted to be agitated by invoking the extraordinary jurisdiction of this Court. The maintainability of the writ petition is assailed again on the basis that employment under the company is a matter of contract and we cannot restore the petitioner to his employment. It is further contended that the incorporation of Clause 28 in the standing orders is wholly justified and is not open to dispute. The termination is valid and for reasons cogent and appropriate.

4. Mr. Ram for the petitioner while not disputing the facts on the basis of which the preliminary objection has been raised, contends that:

- (1) the industrial dispute is not likely to bring any relief to the petitioner ;
- (2) the Tribunal under that Act would have no jurisdiction to challenge the legality or vires of Clause 28 of the standing orders;
- (3) as that provision in the standing orders is without authority of the statute, it is an invalid standing order and the petitioner's services cannot be taken away by exercise of such alleged powers under the standing orders conferred on the general manager.
- (4) While the petitioner may not be entitled to the relief of reinstatement, if such a prayer in law is made because, the employer is a company, in the present case where the vires of the statutory standing orders is disputed, the Court would have jurisdiction to entertain the writ petition for determination of the vires of the standing orders and also pass consequential order relating to reinstatement.

5. The Tribunal's jurisdiction to deal with the standing orders is wide and several decisions of the Supreme Court have reiterated the position. In the case of *Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, it has been indicated thus:

...But there is no warrant, in our opinion, for holding that merely because the Standing Orders Act is a self contained statute, with regard to the matters mentioned therein, the jurisdiction of the Industrial Tribunal under the Act to adjudicate upon the matters covered by the standing orders has been, in any manner, abridged or taken away. It will always be of a proper case, for the union to raise an "industrial dispute" as that expression is defined in Section 2(k) of the Act, and if such a dispute is referred by the Government for adjudication, the Industrial Tribunal or Labour Court, as the case may be, will

have jurisdiction to adjudicate upon the same. But it must also be borne in mind that an "industrial dispute" has to be raised by the union before it can be referred and it is not unlikely that a union must be persuaded to raise the dispute, though the grievance of a particular workman, or a member of the union, be otherwise well-founded. Even if the union takes up the dispute, the State Government may, or may not, refer it to the Industrial Tribunal. The discretion of the State Government u/s 10 of the Act is very wide. It may be that the workmen affected by the standing orders may not always and in every case succeed in obtaining a reference to the Industrial Tribunal on a relevant point. These are some of the circumstances for giving a right and a remedy to the workmen under the Standing Orders Act itself, but there is no indication in the scheme of the Standing Orders Act that the jurisdiction of the Industrial Tribunal to entertain an "industrial dispute" bearing upon the standing orders of an industrial establishment, and to adjudicate upon the same, has in any manner been abridged or taken away, by the Standing Orders Act.

Dealing with the self-same question in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , their Lordships have stated:

We are unable to accept the submission that the bye-laws of a cooperative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, if after such bye-laws laying down the conditions of service are made any person enters the employment of a society those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the articles of association of a company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by standing orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such standing orders are binding between the employers and the employees of the industry governed by these standing orders, they do not have such force of law as to be binding on Industrial Tribunal

adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil Court or a Registrar acting under the Cooperative Societies Act....

Mr. Ram, therefore, is not right in his contention that the Industrial Tribunal would have no jurisdiction to examine the propriety of the Clause 28 of the standing orders which have already been certified. The Tribunal, on the other hand, would thus be competent to deal with the entire matter.

6. The next objection against maintainability of the writ petition for a direction of reinstatement of the petitioner to service seems also to be well-founded. A Bench of this Court in the case of *Bijoy Kumar Singh v. Project Administrator, Industrial Development Corporation, Orissa Ltd.* (1969) 35 C.L.T. 1140, indicated the legal position thus :

It is also settled that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it had a sufficient legal interest. An application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character, nor can such an application be maintained to secure the performance of obligations owed by a company towards its workmen to resolve any private dispute. The condition precedent for the issue of a mandamus is that there is in one claiming it a legal right to the performance of a legal duty, by one against whom it is sought. It is not, however, necessary that the person or authority on whom the statutory duty is imposed need be a public official or official body. Mandamus can issue to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed, and also to companies or corporations to carry out duties placed on them, by the statutes authorising their undertaking. Mandamus will also lie against a company constituted by statute for the purpose of fulfilling public responsibilities (see 1969 S.C.D. 505, *Prag Tools Corporation v. Imanuel and Ors.*).

Reliance was placed on behalf of Mr. Ram on a decision of the Patna High Court in the case of *Behar Journals Ltd. Vs. Ali Hasan and Another*, , where it was held that the certified standing orders of a company have statutory force and the employment under such standing orders becomes a statutory contract. That, however, would not bring about any change in the legal position. The opposite party would remain a company different from the State and the objection which was upheld by this Court in the reported decision would as much apply in the present case. A writ of mandamus for reinstatement of the petitioner to service as such cannot be issued.

7. The preliminary objection raised in this case would, therefore, be sustained. We decline to interfere in the matter. It is open to the petitioner to pursue the

remedy under the provisions of the Industrial Disputes Act. We make no order as to costs.

B.K. Ray, J.

8. I agree.