
(1969) 05 DEL CK 0003

In the Delhi High Court

Case No : Letters Patent Appeal No. 8 of 1968

Management, National Productivity Council

APPELLANT

Vs

S.N. Kaul

RESPONDENT

Date of Decision : 20-05-1969

Acts Referred:

Citation : (1969) ILR Delhi 509 : (1969) 2 LLJ 186

Hon'ble Judges : V.S. Deshpande, J;S.K. Kapur, J

Bench : Division Bench

Advocate : A.R. Lal, Mandan Mohan and J. Ramamurthy, for the Appellant;

Judgement

S.K. Kapur, J.

(1) The question arising for decision in this Letters Patent Appeal against the judgment of T.V.R. Tatachari, J. dated 23rd January, 1968, may be formulated as under: Where an employee is dismissed or discharged or his services terminated before the enactment of Section 2-A of the Industrial Disputes Act on 1-12-1965, can a dispute arising out of such dismissal or discharge etc. be referred to a Labour Court u/s 10 for adjudication even though the cause of the Workman is not supported by other workmen. The facts have been set out in detail in the order of the learned Single Judge and it is unnecessary to elaborate on the same. I will only confine any statement of facts within a very narrow compass.

(2) Respondent S. N. Kaul was employed as a Press Operator by the appellants on December 5, 1960. According to Kaul his services were arbitrarily and illegally terminated by the management of the National Productivity Council (hereafter referred to as "the appellants") on March 9, 1964. By amendment in the Industrial Disputes Act Section 2A was incorporated therein on 1st December, 1965. Kaul is alleged to have approached the Chairman of the Appellants on several occasions but was finally informed on November 26, 1965 that his case for re-instatement could not be considered. He, Therefore, served a notice on the appellants through his lawyer on January 23, 1966, which was ignored.

Conciliation proceedings took place but having proved ineffective, the Delhi Administration made the following reference to the Labour Court :-

Whether the termination of services of Shri S. N. Kaul is unlawful and unjustified, and, if so, to what relief is the workman entitled?"

(3) On a preliminary objection by the appellants, the Labour Court decided that the amendment in the Industrial Disputes Act was not retrospective and employees dismissed or discharged after the coming into force of section 2A could alone avail themselves of the said provision. The Labour Court, Therefore, came to the conclusion that in the absence of espousal by other workmen the dispute did not acquire the status of an industrial dispute and it had, Therefore, no jurisdiction to adjudicate upon the same. Kaul filed a writ petition in this Court challenging the said award of the Labour Court dated 26th October, 1966. The matter was heard by T.V.R. Tatachari, J. who held that the individual dispute between Kaul and the appellants became an industrial dispute on 1st December, 1965, by reason of section 2A of the said Act, the said industrial dispute was existing on 8th June, 1966, when the reference was made to the Labour Court, the reference was valid in law and the Labour Court had jurisdiction to entertain and adjudicate upon the same. The appellants have filed the present appeal against the order of T.V.R. Tatachari, J. and Mr. A. R. Lal, the learned counsel for the appellants, contended that a workman is not entitled to the benefit of section 2A unless the dismissal, termination etc. takes place after coming into force of section 2A, for to hold otherwise would result in giving a retrospective effect to the section which it does not possess. Though there is no direct decision on the point, yet some judgments of the Supreme Court provide guidance in the matter and I will now refer to those. In *Newspapers Ltd. v. State Industrial Tribunal* the Supreme Court construed the provisions of the U. P. Industrial Disputes Act and held that though the use of the word "workmen" in the plural in the definition of "industrial dispute" did not by itself exclude the applicability of the Act to an individual dispute, yet the Act, construed as a whole, led to the conclusion that its applicability to an individual dispute, as opposed to a dispute involving a group of workmen, was excluded unless it acquired the general characteristics of an industrial dispute, viz. the workmen as a body or a considerable section of them made common cause with the individual workman and thus created conditions contemplated by section 3 of the U.P. Act. It appears that faced with this probM4HCD/69-3 lem section 2A was inserted in the Industrial Disputes Act, which reads-

Where any 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."

(4) The matter was again considered by the Supreme Court in *Bombay Union of*

Journalists v. The "Hindu". In that case, section 2(k) of the Industrial Disputes Act fell for consideration and the view taken in the case of Newspapers Ltd. was approved. In this case the following observations in Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan, -were quoted with approval :-

"Notwithstanding that the language of section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only dispute which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union . or a number of workmen."

It was further observed :-

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 workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen."

(5) In this decision, Therefore, the date of reference was taken as the crucial date for the purposes of determining whether the dispute had acquired the status of an industrial dispute.

(6) In Workmen of M/s Dharam Pal Prem Chand (Saugandhi) v. M/s Dharam Pal Prem Chand (Saugandhi), which was an appeal from the Industrial Tribunal, Delhi, the Supreme Court decided that the definition of "Industrial dispute" in section 2(k) construed literally may take within its scope a dispute between a single workman and his employer, but having regard to the general policy underlying the provisions of the Act a dispute between a single employee and his employer could be validly referred u/s 10 only if it is taken up by the Union to which the employee belongs or by a number of employees. It was observed-

"On this view, a dispute between an employer and a single employee cannot, by itself be treated as an industrial dispute, unless it is sponsored or espoused by the Union of workmen or by a number of workmen. In other words, if a workman is dismissed by his employer and the dismissed workman's case is that his dismissal is wrongful, he can legitimately have the said dispute referred for adjudication before an Industrial Tribunal u/s 10(1) of the Act, provided a claim for such a reference is supported either by the Union to which he belongs or by a number of workmen."

(7) The next decision having a bearing on the case is Jahiruddin and others v. K. D. Rathi, Factory Manager, Model Mills, Nagpur Ltd., and others. In this case the Central Government in exercise of powers u/s 18-A of the Industries (Development and Regulation) Act, 1951, had taken over the management of the respondent-mills. On March 25, 1960, the State of Maharashtra, in exercise of

powers conferred by sections 3 and 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958, made a notification declaring the respondent-mills to be a "relief undertaking" for a period of one year ending with march 25, 1961. The effect of the declaration was to exempt the respondent mills from the operation of section 16 of the Central Province and Berar Industrial Disputes Settlement Act (XXIII of 1947), which inter alias conferred on the Labour Commissioner power to decide an industrial dispute touching the dismissal, discharge etc. of an employee working in any industry. On December 15, 1960, when the notification made by the State Government under the Bombay Relief Undertakings (Special Provisions) Act, 1958, was in force, the employees abstained from work and thereupon the Factory Manager of the respondent-mills issued notice to employees to show cause why they should not be dismissed from service for joining an illegal strike. The said employees were on 6th January, 1961, dismissed from service. The exemption from section 16, was, however, withdrawn with effect from 4th April, 1961. On April 25, 1961, the employees filed applications before the Assistant Commissioner of Labour claiming re-instatement with back wages. The Assistant Commissioner having ordered their re-instatement, the respondent-mills preferred applications in revision to the State Industrial Court which revision applications were allowed on the ground that the Assistant Commissioner was not competent to entertain the employees' applications. The Supreme Court came to the conclusion that the Assistant Commissioner could entertain those petitions because on the date of application before the Commissioner of Labour the exemption granted to the mills was no longer in operation. It was observed-

The right of an employee to claim reinstatement on a wrongful dismissal exists de hors section 16 of the State Act. Section 16 provides a forum for a dismissed employee to claim reinstatement but does not create a right. The effect of an exemption granted by the notification issued under the Bombay Act is not to destroy the right but to suspend the remedy prescribed by section 16 for enforcing that right during the period when the exemption remains in force. The right can be enforced by a dismissed employee by resorting to the provisions of section 16 of the Act provided he makes the application within six months from the date of his dismissal. In the present case, the appellants filed their applications within the period specified in section 16 of the State Act. The High Court was in error in holding that the applications were not maintainable.

(8) The Supreme Court approved the decision in *Birla Brothers Ltd. v. Modak*, wherein it had been held that for 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 retrospective effect to the Act arose. The following propositions emerge from the decisions referred to hereinbefore :-

(1)Section 2(k) of the Industrial Disputes Act, construed literally and in isolation,

may take within its sweep a dispute between a single workman and his employer but when the statute is taken by its four-corners and read in the light of the general policy underlying it, a dispute between an employer and an employee cannot itself be treated as an industrial dispute unless espoused by the Union of workmen or by a number of workmen; and

(2) If a dispute is supported by appreciable number of workmen on the date of reference it can form the subject-matter of a valid reference.

(9) u/s 10 of the Industrial Disputes Act where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the same inter alia to a Labour Court for adjudication. If an individual dispute can be referred to a Tribunal in case the same is espoused by other workmen at the time of reference, I see no reason why it is not competent on the part of the appropriate Government to refer a dispute which has acquired the character of an industrial dispute by reason of enactment of section 2A before the date of reference. While referring a dispute u/s 10 the appropriate Government has to see whether or not any industrial dispute exists at that time, and, if it does, it can legitimately form a subject-matter of reference. The principle announced in the various decisions of the Supreme Court recognizes the potentiality of a dispute which is individual in character when it arises attaining the status of an industrial dispute at the date of reference. Such a status may be attained, as has been held by the Supreme Court, by other workmen espousing the cause of the individual workman. In my opinion, it can equally be attained by the Legislature stepping in and providing that otherwise an individual dispute will be treated as an industrial dispute. In this case the dispute, when it arose, may have been an individual dispute. It became an industrial dispute as soon as section 2A was enacted. It was existing on that day and, Therefore, the appropriate Government could properly refer it to the Tribunal.

(10) It was argued on behalf of the appellants that section 2A can apply only where an employer discharges, dismisses etc. a workman after the enactment of the section and the other interpretation will have the effect of making the section retrospective, which it is not. This argument suffers from a fallacy. The emphasis in the section is not on the date of dismissal or discharge but on any dispute or difference between an individual workman and his employer connected with or arising out of discharge or dismissal. In interpreting a statute the Courts must glean through all its provisions. Let me first look at section 2A itself in the light of the facts of this case. The services of the employee have been terminated. There is a dispute connected with or arising out of such termination etc. and that dispute has on that date of reference to be treated as an industrial dispute. Then one reaches the stage of section 10. When the appropriate Government takes up the matter there is in existence an industrial dispute satisfying the requirements for a valid reference. In the scheme of the Act, Therefore, date of dismissal etc. is indifferent. Section 2A neither expressly nor by implication suggests that only

such disputes as arise out of dismissal after 1-12-1965 shall be treated as industrial disputes. The way I look at section 2A is that it takes note of every dispute arising out of or connected with termination etc. and confers on such a dispute the status of an industrial dispute. In the nature of things, Therefore, date of termination cannot be treated crucial. The purpose of a statute must lend vitality to the legislative words and the interpretation placed by me promotes in the fullest manner the object of the statute. It follows that a dispute arising out of dismissal etc. that exists on the date of enactment of section 2A, though an individual dispute to start with, attains the character of an industrial dispute on the said section coming into force. It is, Therefore, not correct to say that by this interpretation any retrospective effect is being given to the section. The section takes in an individual dispute as existing and attributes it with the quality of an industrial dispute.

(11) There is, in the circumstances, no merit in this appeal and the same is dismissed but with no order as to costs.

V. S. Deshpande, J.

(12) I agree with the conclusion of my learned brother Kapur J., but in view of the importance of the subject, I would like to add my own reasons for the same.

(13) By Act No. 35 of 1965, Section 2-A was inserted in the Industrial Disputes Act, 1947 (hereinafter called "the Act") with effect from 1-12-1965. It runs as follows:-

"Where any 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."

(14) The only question for consideration in this appeal is whether the dispute raised by an individual workman (not supported by other workmen) in respect of his discharge or dismissal, which has taken place prior to 1-12-1965 can validly be referred for adjudication by the appropriate Government u/s 10(1) of the Act after 1-12-1965.

(15) The respondent S. N. Kaul, was a workman whose services were terminated by the appellant-employer on 19-3-1964. His representation was turned down by the employer and he was finally informed on 26-11-1965 that his case could not be considered any more by the employer. Kaul thereupon initiated conciliation proceedings and on 3-5-1966 the Delhi Administration referred to the Labour Court the following dispute "whether the termination of services of Shri S. N. Kaul is unlawful and unjustified and, if so, to what relief the workman is entitled to. The Labour court declined to entertain the references on the ground that the individual dispute did not acquire the character of an industrial dispute by virtue

of section 2-A as the said provision was not retrospective and could apply only to persons dismissed or discharged after 1-12-1965.

(16) The award of the Labour Court was challenged by Kaul in Cw 1196 of 1967 before T.V.R. Tatachari J. on the ground that the individual dispute arising prior to 1-12-1965 became an industrial dispute on and from 1-12-1965 by virtue of section 2-A not because section 2-A was retrospective, and because the reference to adjudication by the Government was made after 1-12-1965 and, Therefore, an industrial dispute existed within the meaning of section 10(1) of the Act on the date of the reference. The reference was, Therefore, valid. The employer resisted the writ petition on the ground that the language of section 2-A being couched in the present tense, it could apply only to a discharge or dismissal of a workman which has taken place on or after 1-12-1965. The learned single Judge accepted the contention of the workman, quashed the award of the Labour court and directed it to proceed with the reference. This Letters Patent Appeal is by the employer against the decision of the learned single Judge.

(17) The learned counsel for the appellant argued that the language of section 2-A is clear and effect should be given to its plain grammatical meaning. The words "where any employer discharges, dismisses" etc. are in the present tense. They speak on and from 1-12-1965 only. They did not exist before that date. They, Therefore, clearly mean that the dismissal or discharge must take place on or after 1-12-1965 if section 2-A is to apply to such a discharge or dismissal. The learned counsel pointed out that if the legislature had intended that section 2-A should apply to dismissal or discharge which has taken place prior to 1-12-1965, then it would have used these words in the past tense or present perfect tense. It would have then said "where any employer discharged, dismissed or has discharged, has dismissed" etc. I am, however, unable to accept this argument for several reasons.

(18) The real issue in this case is not whether section 2-A is retrospective in operation, but whether it applies to facts which have occurred prior to 1-12-1965. A statute, having a retrospective application is clearly distinguishable from a statute which confers prospective benefit on the basis of antecedent facts. retrospective statute alters pre-existing substantive rights and can have effect from before the date of its enactment. Legislature is slow to give retrospective effect to legislation. This is why a statute is not to be construed retrospectively unless there are clear words or other indications in it which compels the conclusion that its application is retrospective.

(19) In this case, it is not necessary to consider if Section 2-A is retrospective and would validate a reference of an individual dispute made prior to 1-12-1965. All that we have to consider is whether a reference can be made after 1-12-1965 of an individual dispute arising out of a discharge or dismissal which has taken place prior to 1-12-1965. In deciding the question whether a particular statute applies, though prospectively, to past events, the language used is no doubt the

most important factor to be taken into account. But, it cannot be stated as an invariable rule that the use of present tense or of the past or of present perfect tense alone is sufficient to show whether the statute applies only to the future events or to the past events also. The question has to be decided not only (1) having regard to the language, (2) but also to the nature of the subject matter of the statute or the rights affected thereby, (3) the object of the statute and (4) lastly the circumstances under which the statute was passed.

(1) In *Re. v. St. Mary Whitechapel (Inhabitants)*, the statute used not only the present tense, but also the future tense in the following words :-

No woman residing in any parish with her husband at the time of his death shall be removed from such parish within 12 months next after his death if she so long continues a widow."

(20) In that case it was sought to remove a widow within 12 months from the date of death of her husband, who died prior to the commencement of the Act. It was argued that to apply the Act to such a case was to construe it retrospectively. Nevertheless, the statute was held to apply to pre-existing facts by Lord Denman, who rejected the above contention in the following words :-

"It was said that the operation of the statute was confined to persons who had become widows after the Act was passed and that the presumption against retrospective statute being intended supported this construction but we have before shown that the statute is in its direct operation prospective, as it relates to future removals, only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing."

(21) This is sufficient to show that the use of the present or past tense is not decisive and the language has to be considered in conjunction with other factors.

(2) It is significant to note that section 2-A does not deal with discharge or the dismissal of a workman as such. Its subject matter is different. It says that a dispute between an individual workman and his employer connected with such a discharge or dismissal shall be deemed to be an industrial dispute even though the dispute is not sponsored by other workmen or by a Union of workmen. For this reason, section 2-A has to be read with section 10(1) of the Act. The question is whether such a deemed industrial dispute can arise out of a dismissal or discharge which took place prior to 1-12-1965 or whether it must arise out of a discharge or dismissal taking place on or after 1-12-1965. For, the reference of the industrial dispute for adjudication is made u/s 10(1) of the Act. The power of the Government to make a reference is exercised u/s 10(1) of the Act. The language of section 10(1) directly bears on the question whether the facts giving rise to the industrial dispute can be antecedent to the statute or must happen after the statute comes into force. Section 10(1) enables the Government to make a reference when it is of opinion that "any industrial dispute exists or is apprehended". An industrial dispute which existed on the date of the

commencement of section 10(1) cannot be said to have been based on facts which took place after section 10(1) came into force. Without any doubt, Therefore, section 10(1) enables the Government to refer an industrial dispute to adjudication if on the date of the reference it existed, obviously having arisen out of facts which happened before section 10(1) came into force. It is sufficient to base this conclusion on the language of section 10(1) as the reference is made there under. The definition of "industrial dispute" in section 2(k) of the Act does not in any way show that facts Constituting the industrial dispute must have arisen after section 10(1) came into force. This legal position has long been well established. By *Birla Brothers Ltd. v. Modak*, approved by the Supreme Court in *Jahiruddin and others, v. K. D. Rathi*. If an industrial dispute, as we find in section 2(k) of the Act, could be referred to adjudication u/s 10(1) of the Act, even though it arose out of acts which had taken place prior to the commencement of section 10(1) of the Act, a fortiori, an industrial dispute falling within the definition of section 2-A of the Act can also be referred to adjudication u/s 10(1), when the facts out of which it arose took place after the commencement of section 10(1), though before the commencement of Section 2-A.

(3)The object of section 2-A is not to create a right for the first time. On the contrary, its object is to widen the ambit of a pre-existing right. The right concerned is the right to move the Government to make a reference to adjudication of an industrial dispute. Prior to 1-12-1965 the Supreme Court had held that the definition of an industrial dispute in section 2(k) construed in the context of other provisions of the Act did not include a dispute between an individual workman and his employer unless it was sponsored by other workmen or by a Union of workmen. This state of law had shown that the dispute between an individual workman and his employer could be a potential industrial dispute. For, on the same facts such an individual dispute could be converted into an industrial dispute as soon as the other workmen or the Union of workmen sponsored it. This was significant to show that it is not one point of time but rather a continuum, which was the characteristic of industrial dispute, which may be potential or actual. An industrial dispute is not something which just happens at a point of time and then is no longer there. By its every nature, an industrial dispute exists and continues till it is resolved either by industrial adjudication or by some other means. The existence of an individual dispute is not, Therefore, to be found merely by looking to the moment of the discharge or dismissal, but by looking to the series of facts, which begin to happen one after the other from and after such a discharge or dismissal. An individual dispute could thus become an industrial dispute long after the discharge or dismissal had happened when it was sponsored by other workmen or by the Union of workmen. On the same analogy, an individual dispute relating to discharge which was not an industrial dispute prior to 1-12-1965 could also become an industrial dispute from 1-12-1965 onwards by virtue of the new section 2-A. The object of section 2-A was to give an individual dispute relating to a discharge, etc. the status of an industrial

dispute in respect of such disputes only widen the ambit of the definition of an "industrial dispute" in section 2(k) of the Act. If the original definition of "industrial dispute" undoubtedly applies to a discharge or dismissal of a workman, which had taken place before the commencement of the Act, the amendment of the said definition of section 2-A, on the same principle would apply to a discharge or dismissal taking place prior to the commencement of section 2-A.

(4) The enactment of section 2-A was undertaken by the Parliament solely with a view to modify the law made by the judicial decisions holding that an "industrial dispute" under the Act did not include an individual dispute which was not sponsored by other workmen or by a Union of workmen. In this sense section 2-A is a declaratory provision. The usual presumption against retrospective operation is not applicable to declaratory statutes. The following statement of law in *Craies on Statute Law*, 6th Edn. page 59, was approved by the Supreme Court in *Central Bank of India, v. Their workmen*. "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law or the meaning or the effect of any statute. Such Acts are unusually held to be retrospective. The reason for passing a declaratory Act is to set aside what the Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes." Usually such an Act contains a preamble using the word "declare". Of late, however, the use of preamble has been discarded by the draughtsmen introducing Government Bills in Parliament. There is, Therefore, no preamble to Act 35 of 1965. In determining the nature of the Act, however, it is its substance and not merely the form which is to be looked into. If a new Act is to explain an earlier Act, it would be a declaratory Act. Section 2-A undoubtedly explains the meaning of "industrial dispute", which had been defined in the Act and had also been construed by the courts. Being a declaratory provision, section 2-A was intended to apply to pre-existing facts, if not retrospectively.

(22) The question posed at the beginning of this judgment is, Therefore, answered in the affirmative. Consequently, the reference to Labour Court made by the Delhi Administration on 6-8-1966 was, Therefore, valid. The appeal is, Therefore, dismissed with no order as to costs.