
(1963) 10 MAD CK 0022
In the Madras High Court
Case No : Writ Appeal No. 163 of 1968

Management of Vijayakumar Mills Ltd.	APPELLANT
Vs	
Secretary, Vijayakumar Mills National Workers Union, A. Kalayampathur and Another	RESPONDENT

Date of Decision : 29-10-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1964 Mad 395 : (1965) 10 FLR 287 : (1964) ILR (Mad) 798

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Ramakrishnan, J

Bench : Division Bench

Advocate : K. Rajah Aiyar, instructed by King and Partridge, for the Appellant;
Addl. Govt. Pleader and B. Lakshminarayana Reddi, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Iyer, C.J.—Kumaraswami, employed as a time-keeper in the Vijayakumar Mills Ltd., Palani, was dismissed by the

management on 29-3-1958 as a result of an enquiry into his alleged misconduct. The propriety of the order of dismissal subsequently formed the

subject-matter of an industrial dispute and was referred by the State Government for determination by the Labour Court, Madurai. The jurisdiction

of that Court to enter upon that reference was contested by the management, on the ground that the Vijayakumar Mills National. Workers Union

which sponsored the dispute was not competent to do so, as Kumaraswami was only a member of the staff and had no community of interest with

the industrial workers employed by the management. It is conceded, though nothing turns upon such a concession, that Kumaraswami, was a

member of that Union.

The Labour Court was of the opinion that the grievance of the dismissed employee a member of the staff, could not be taken up by the Union

which represented the industrial workers, as there was no community of interest between him and others. It consequently rejected the reference.

The award of the Labour Court formed the subject-matter of proceedings under Article 226 of the Constitution before Veeraswami J. who

disagreeing with the Labour Court, held that there was sufficient community of interest between the dismissed employee and the members of the

Union to convert what was an individual dispute, so far as Kumaraswami was concerned, into an industrial dispute. The learned Judge took the

view that for the purpose of ascertaining whether there was a community of interest between a dismissed employee and the rest of the workers

who sponsored his case, it was not necessary that there should be an identity or similarity of the conditions of service under which they were

respectively employed. The result of this finding, was that the award of the Labour Court was; quashed the Court was directed to dispose of the

reference on its merits. The management now appeals.

2. It is not disputed that Kumaraswami though employed only in a supervisory capacity will be a workman as defined in Section 2(s) of the

Industrial Disputes Act. Prior to the amendment of that definition by Act XXXVI of 1956 the term ""workman"" did not include a person employed

to do supervisory work. Under the terms of the definition as amended by that Act, a ""workman"" means any person employed in any industry to do

any skilled or unskilled manual, supervisory, technical or clerical work. But a person employed in a supervisory capacity who draws wages

exceeding Rs. 500 per month, will not be regarded as a workman. The salary of Kumaraswami in the present case was less than Rs. 500 per

month; he was therefore a workman under the Act.

3. The only question that falls for consideration in this appeal is, whether there has been an industrial dispute to justify the reference. The contention

on behalf of the management is that as the conditions of service of Kumaraswami, the dismissed employee, were different from those applicable to

the industrial workers, the latter who were members of the Vijayakumar Mills National Workers Union, could not validly sponsor the dispute and

convert thereby what is an individual dispute into an industrial one. Section 2(k)

of the Act, which defines what an "industrial dispute" is says that it means "any dispute or difference between employers and employees or between employers and Workmen, or between workmen and workmen, which is connected with the employment or non-employment of the terms of employment or with the conditions of labour, of any person."

4. The dispute regarding the discharge or dismissal of an individual workman without more, can only be an individual dispute. But it is settled law

that such a dispute can become the subject-matter of an industrial dispute, if the workman in general or a section of them forming an appreciable

number take up his cause. It is not a matter in controversy that the dispute in the present case is between the employer and the workmen, and that

it relates to the non-employment of Kumaraswami. But what is contended is that there is no community of interest between the other workers and

Kumaraswami which would alter the character of an individual dispute into an industrial one.

5. Under the terms of the definition, it will be open to the workman of an employer to raise a dispute in regard to the non-employment of any

person and thereby give the character of a collective dispute to it. But the term "any person" cannot obviously include an outsider. The construction

of the definition came up for consideration before the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi*

Tea Estate, . That case arose before the amendment of the definition of the term "workman" was introduced into the Act. There, one Banerjee,

who was employed as a Medical officer of the Tea estate, was dismissed from service. The legality of the dismissal was put in question and the

cause of the medical officer was espoused by the workers union of the tea estate, which raised a dispute. A question arose as to whether the

dispute could be regarded as an industrial dispute.

Their Lordships of the Supreme Court, after a detailed analysis of the provisions and purpose of the Industrial Disputes Act, came to the

conclusion that the expression "any person" occurring in Section 2(k) of the Act could not be given its ordinary meaning but must be construed

consistently with the intent and purpose of the Act. So construing, they held that , the Medical officer, who under the then existing definition of

"workman" would not come within it could not be held to have any community of

interest with the other members or the Union to justify an industrial dispute being raised in regard to his non-employment. Summing up the position, S. K. Das J. who delivered the judgment of the majority of the court, observed that the expression "any person" in Section 2(k) of the Act, must be read subject to two crucial limitations, namely (1) the dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication of one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour, as the case may be, the parties to the dispute have a direct or substantial interest. In the absence of such interest, the dispute cannot be said to be a real dispute between the parties.

6. But it must not be omitted to be noticed that in that case the Medical Officer belonged to a different category of employees from the workman and it was held that the workman had no direct or substantial interest in his employment or non-employment, even though the former might be a member of the same Trade Union.

7. In the present case, we are concerned only with the second of the tests mentioned above, as there is no dispute in regard to the first. The question whether the other workers have not a direct or substantial interest in the non-employment of Kumaraswami will depend on the facts and circumstances of the case. Apart from the fact that he is a "workman" within the meaning of Section 2(s) of the Act, his services in the matter of time-keeping is so intimately connected with the work of the industrial workers that one can easily say that the workers as a class are directly and substantially interested in the non-employment or employment of Kumaraswami.

8. But Mr. Rajah Aiyar appearing for the appellant has invited our attention to that part of the judgment of the Supreme Court where the learned Judge has cited with approval the following passage from the judgment in *George Hudson Ltd. v. Australian Timber Workers Union*, 32 C L R 413, where Isacs J. setting out the characteristics of collective dispute, observed, If, therefore, the dispute, is a collective dispute, the party raising the dispute must have either a direct: interest in the subject-matter of the dispute

or a. substantial interest therein in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It is the community of interest of the class as a whole class of employers or class of workmen which furnished the real nexus between the dispute and the parties to the dispute.

In an earlier passage the Supreme Court observed:

We recognise that solidarity of labour or general interest of labour welfare may furnish, in some cases, the necessary nexus of direct or substantial interest in a dispute between employers and workmen, but the principle of solidarity of the labour movement or general welfare of labour must be based on or correlated to the principle of community of interest; the workmen can raise a dispute in respect: of those persons only in the employment or non-employment of the terms of employment or the conditions of labour of whom they have a direct or substantial interest.

As we pointed out earlier, the Supreme Court was then concerned only with a case where the workmen, raised a dispute in regard to a non-workman employee of the same management. There could obviously be no sufficient community of interest in that case to justify the general body of workmen to raise a dispute in regard to a person who was not a workman. The Supreme Court itself has recognised in the same judgment that after the amendment of the definition ""workmen"" introduced in the year 1956, the position might perhaps be different.

9. In *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, a dispute was raised by a Trade Union on behalf of a dismissed employee of a newspaper. There were only three journalists who could be said to be ""workmen"" in the employ of the newspaper office in that place. The dismissed employee was a member of a Trade Union which consisted of other journalists working in different establishments as well. Evidence showed that of the three employees of the newspaper in question two did not support the dispute. What the dismissed employee, therefore got was the support of outsiders who happened to be members of the Union. There could be therefore no community of interest between the aggrieved worker and those that espoused his cause as there were workmen under different [employees. The Supreme Court held that.: the dispute was only an individual dispute, as it was

not supported by the Union of the workmen of the employer against whom the dispute was raised or by an appreciable number of such workmen. That was a case where it was held that a dismissed employee could not by getting the support of, outsiders convert his individual dispute with the management into an industrial one.

10. Mr. Rajah Aiyar, has, however, contended that as Kumaraswami in the present case was a member of the staff, the proper persons who could sponsor his case would be the other members of the Mills supervision staff and not the workmen with whom he could be said to have no community of interest. In support of that contention, the learned counsel referred to the decision of Balakrishna Aiyar J. in *The Buckingham and Carnatic Co. Ltd., Madras Vs. The Buckingham and Carnatic Mills Staff Union and Another*, where the learned judge held that there could be an organisation of workers on the basis of crafts in an establishment and if one such union sponsored a dispute relating to a dismissed employee it could be an industrial dispute. This judgment was affirmed in *Buckingham and Carnatic Co. Ltd., Madras Vs. Buckingham and Carnatic Mills Staff Union and Another*, where it was observed that there could be more than one Union of workmen employed in an establishment and a dispute espoused by an Union different from the one which had the largest membership within the establishment, could, nevertheless, be an industrial dispute. We are unable to see how these decisions can have any bearing on the case now before us. These cases only laid down the application of the general principle that an individual dispute sponsored by a section of the workers of an establishment could be regarded as an industrial dispute. An Union formed by a department of a large establishment was therefore held competent to espouse the cause of the workers.

The question before us however, is, whether it will be obligatory upon any worker who has got a grievance against the management, to have his cause espoused by the employees of the very department in which he works, or whether a larger Union of workers from other departments could support his case. Learned counsel for the appellant has relied strongly on the decision of the Mysore High Court in *M. S. K. Mills Co. Ltd, v. Vittal Kamath*, 1959 2 Lab L J 196 : AIR 1959 Mys 180 to show that only workers whose service conditions under the same employee are

identical, could sponsor the dispute. The dispute in that case related to the dismissal of an assistant spinning master of a company, who was among

the supervisory staff. But his emoluments were such that he satisfied the terms of the definition of "workmen" after the amendment of Section 2(s)

of the Act. The learned judges of the Mysore High Court held that as the conditions of service of the dismissed employee were different from the

conditions of service of the workers who sponsored his case, there could be no community of interest which was capable of converting the

individual dispute into an industrial dispute one. They observed :

The nature of duties of Kembhavi. who was admittedly working in the manufacturing department of the mills, cannot be the same as the nature of

duties of clerks, who are members of the respondent 2 union. His conditions of service will, therefore, be different from the conditions of service of

the clerks. He is not even a member of the clerks' union. The Union cannot, therefore, be interested in his conditions of service unless a substantial

majority of the workmen of the class to which Kembhavi belongs are among the members of the Union. Nothing has been pointed out to show

how and in what manner the clerks' union has any direct or substantial interest in the employment, non-employment or conditions of employment

of Kembhavi. . . .

With great respect to the learned judges, we are unable to subscribe to the proposition stated in such wide terms. In an Industrial dispute between

workmen and the employer, there are and can be only two parties, namely, workmen on the one hand and the employer on the other. Such a

dispute is a collective dispute. So long as the person in respect of whose employment or non-employment the dispute is raised is a workman, it can

reasonably be said that the other workers under the same employer whatever the nature of their work or the conditions of their service might be,

will be substantially interested in that question. In this regard we are unable to attach any importance to the conditions of service which the various

employees may have, for a due consideration of a question of this sort.

The matter is put beyond doubt by the observations of Gajendragadkar J. in a recent unreported judgment of the Supreme Court in C. A. Nos.

480 and 481 of 1982 M/S. J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. Labour Appellate Tribunal of India (now reported in AIR 1964

SC 741). The case before the Supreme Court related to the validity of the dismissal of certain Malis employed for the maintenance of gardens

attached to the bungalows of some officers of the mills situate in the compound of the mills. It was argued that the Malis would not be "workmen

within the meaning of Section 2(s) of the Act, as it was not shown that they were employed in the industry of the employer. The contention was,

however, rejected and it was held that the term, "employed in any industry" occurring in Section 2(s) would include even employees engaged in

connection with the operation incidental to the main industry. The learned Judge observed :-

In our opinion, an employee who is engaged in any work or operation which is incidentally connected with the main industry of the employer

would be a workman provided the other requirements of Section 2(s) are satisfied. In this connection, it is hardly necessary to emphasise that in

the modern world industrial operations have become complex and complicated and for the efficient and successful functioning of any industry,

several incidental operations are called in aid and it is the totality of all these operations that ultimately constitute the industry as a whole, wherever

it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be

unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or

operation of the industry.

There was no argument in that case that the difference in the nature of the work and in the condition of service between the Malis and other

workers affected the question.

11. The work of a time-keeper can undoubtedly be said to be incidentally connected with the main industry and therefore he would be a workman.

Once he is a workman there must exist sufficient community of interest between him and the industrial workers of the Mill, creating in the latter a

substantial interest in his employment or non employment. We need not here consider the case of a large establishment having branches over

several parts of the country or several industries. Here we have a case of a single employer in one place employing for his business both

supervision staff and industrial worker, both of them satisfying the definition of

the word workmen under the Act. Although their functions are different and the conditions of employment are also not the same, they would still be workmen interested in the non-employment of each other.

12. We would, therefore, agree with the learned Judge and hold that the reference by the Government to the Labour Court was valid and that the dispute which the latter was asked to adjudicate was an industrial dispute. The appeal fails and is dismissed with costs.