
(1955) 04 BOM CK 0006
In the Bombay High Court
Case No : Appeal No. 112 of 1954

Mayekar P.L.

APPELLANT

Vs

Amichand Narayan

RESPONDENT

Date of Decision : 06-04-1955

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2

Citation : AIR 1956 Bom 30 : (1955) 57 BOMLR 1000 : (1956) ILR (Bom) 26

Hon'ble Judges : M.C. Chagla, C.J.;Desai, J

Bench : Division Bench

Judgement

Coyajee, J.—This is a petition against the order made by the Labour Appellate Tribunal in connection with two persons who respondents 2 and 3. It appears that a dispute had been referred for adjudication and twenty demands were made on behalf of the union. Demands 19 and 20 were for the reinstatement of respondents 2 and 3. It appears that respondents 2 and 3 were at on stage employed by the Andheri-Marol Bus service and there was and adjudication No. 187 of 1950 in December 1950. In that these two parties applied to be reinstated. The Andheri-marol Service objected on the ground that they were not employees of the Santa Cruz-Kalina-Malad-Marve Bus Service, namely, the petitioner. In those circumstances there was an order of reference made on 16 September 1952 of all these disputes.

2. The narrow point is whether the adjudicator and the Appellate Tribunal had Jurisdiction to entertain this question in connection with respondents 2 and 3. It is not denied that respondents 2 and 3 were discharged from the Santa Cruz-Kalina-Malad-Marve Bus Service sometime prior to the disputes arising which were referred at the instance of the union for adjudication.

3. The only question that requires to be answered on the petition is whether for the purposes of the adjudication respondents 2 and 3 were workmen within the definition of "workman" as set out in S. 2, Sub-section (s), and the question falls within S. 2, Sub-section (k), namely, "industrial dispute." Now, it is not denied on

behalf of the petitioner that it is not necessary that a dispute should be raised by other parties on behalf of the dismissed employees. The question is whether they were workmen within the proper definition of S. 2, Sub-section (s), which says that "workman" means any person employed including an apprentice in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute. The other section, namely, Sub-section (k), says that "industrial dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

4. To my mind, the question on this petition is to be answered by deciding what is the meaning to be attached to the words appearing in S. 2, Sub-section (s), "discharged" during that dispute." Now, to my mind, reading the two sections together and giving every force to the words "any person" as appearing in S. 2, Sub-section (k), can it be said that union can bring within the orbit of adjudication the case of the employees not dismissed during the dispute ? This is the whole question before me. I have been referred by Mr. Gokhale appearing on behalf of the respondents to the decision of the Federal Court in *Western India Automobile Association Vs. The Industrial Tribunal*, and the observations of the learned Chief Justice Mahajan are at pp. 897 and 898. The question there was whether the definition of the expression "industrial dispute" given in the Act included within its ambit, in the words of the learned Chief Justice, a dispute in regard to reinstatement of dismissed employees. Thereafter the definition would include cases of re-employment of persons victimized by the employer and that "non-employment" is the negative of "employment" and would mean that disputes of workmen out of service with their employers are within the ambit of the definition and concluded at p. 906 by stating that the last words in the definition of industrial dispute, namely, "any person" are a complete answer to the argument of the appellants. Now it cannot be denied that as far as the facts of that case were concerned, the western India Automobile Association had suspended during the dispute a member of their workmen who did not respond to certain notice and clearly as far as this goes, the question was whether the dismissed employees who were on the face of that case dismissed during the dispute were entitled to be reinstated and whether the tribunal had the power to do so. This had been explained in the case of *Narendra Kumar v. All India Industrial Tribunal* (1952) 55 Bom. L.R. 125 and the learned Chief Justice pointed out that the only question that the Federal Court was called upon to decide was whether the question of the reinstatement of a dismissed servant could form the subject-matter of an industrial dispute within the meaning of S. 2, Sub-section (k) and that it was to be noted that these workmen were dismissed after the dispute had started between the workmen and the employers and the definition of "workman" under S. 2(s) included a workman discharged during an industrial dispute, and the finding of the Court from which the appeal was preferred to the

Federal Court was that the workmen whose reinstatement was in question although discharged were workmen within the definition of the Act and therefore the dispute was directly between workmen and their employers. Now, it is clear that as far as the decision of the Federal Court is concerned, it does not directly apply to the construction of the words "workmen discharged during that dispute." On a plain reading of the section, to my mind, if the contention on behalf of the respondents were accepted, it would necessarily mean completely ignoring the words "during that dispute" and it particularizes the dispute, namely, "that dispute," so that to my mind the jurisdiction is limited to instances where the party, although whose case may have been brought up before the tribunal at the instance of the union and who was not a party to the proceedings as such, was a party who had been victimized by being dismissed during the existence of the dispute and discharged during that controversy. I have been referred by Mr. Gokhale in this connection to a decision of the Madras High Court in Sri. C. Baktavatsalu Nayudu, Industrial Tribunal, Madura at the Commercial Tax Officer Vs. The Chrome Leather Co. Ltd. and Another, namely, the judgment of Mr. Justice Horwill, where a passage is relied upon which is as follows (p. 861) :

". . . A workman is so defined in S. 2(s) as to include a workman discharged during the dispute so that if a dispute has arisen between the management and the workers and any person is discharged during the course of the dispute, then that workman is entitled to bring the matter before the Government for reference to an arbitration tribunal. The dismissal of a workman whether before or during the dispute, may also be the subject of a dispute between the management and workman not dismissed."

5. Mr. Gupte rightly pointed out that looking to the facts of the case this particular observation appears to be obiter and the words of the section, namely, "workmen discharged during that dispute" have not been considered in this judgment at all. In these circumstances I am unable to accept the reasoning contrary to the plain construction of S. 2, Sub-section (s). Mr. Gupte rightly conceded that the union has every right once an adjudication has been entered upon to bring within the ambit of the adjudication claims of workmen who are not parties to the dispute, but it must be a discharge during the pendency of the dispute.

6. In these circumstances it is my view and I have come to the conclusion that the adjudication tribunal and the Appellate Tribunal on a proper reading of the section had no jurisdiction to entertain applications by parties who were discharged and admittedly discharged long before the dispute arose which was referred to adjudication and thereafter went before the Appellate Tribunal. The petition must, therefore, be allowed. There will be an order for the issue of a writ of certiorari, namely, that the records be sent for and the order of the adjudication tribunal as well as of the Appellate Tribunal be quashed. Mr. Gupte, on behalf of the petitioner, does not press for costs. Therefore, there will be no order as regards the costs of this petition.

II

Chagla, C.J.

7. This is an appeal against the decision of Mr. Justice Coyajee by which the quashed as order passed by the Industrial Appellate Tribunal, and he came to make the order under the following circumstances. Appellants 1 and 2 were employees of respondent 1 and they were dismissed prior to 1952. Certain demands were put forward by the labour union of which the appellants were members and among the demands were reinstatement of these two dismissed employees, and the Government referred all these demands to the industrial court under S. 10(1)(c) of the Industrial Disputes Act. On 18 June 1953 the industrial tribunal made an award and directed respondent 1 to reinstate the appellants from the date of their dismissal. There was an appeal to the Industrial Appellate Tribunal and on 19 April 1954 the Industrial Appellate Tribunal confirmed the award made by the industrial tribunal. The employer, respondent 1, challenged this award before Mr. Justice Coyajee, and his contention was that the Government had no jurisdiction to refer to the industrial tribunal the cases of the appellants and the industrial tribunal had no jurisdiction to deal with those cases. Mr. Justice Coyajee upheld the contention of the employer and the two dismissed employees have now become in appeal.

8. What is argued by Mr. Gupte on behalf of the employer is that looking to the definitions of "industrial dispute" and the workman," inasmuch as the appellants were dismissed prior to the reference made by the Government on 16 September 1952, they did not fall within the definition of "workman" and no industrial dispute could be raised with regard to them. We will presently examine this contention, but it seems to us rather a startling submission to make that under the Industrial Disputes Act a workman who has been wrongly dismissed cannot raise an industrial dispute with regard to his wrongful dismissal. We should have thought that the very purpose of labour legislation was to prevent employers wrongfully dismissing their employees, and if they did so, to confer jurisdiction upon labour courts in the case of a wrongful dismissal to compel the employer either to reinstate the employee or to pay compensation. But as the argument has been seriously urged by Mr. Gupte and has been accepted by the learned Judge below, we must proceed to examine that argument. Now, "industrial dispute" is defined in S. 2(k) and the definition is :

""industrial dispute" means any dispute or difference between employers and employers, or employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

9. And "workman" is defined in S. 2(s) and it is an exhaustive definition to the effect that it means any person employed (including an apprentice) in an industry to do any skilled or unskilled manual or clerical work for hire or reward, and the definition includes within the ambit of "workman" something more and

that is :

"for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

10. Without looking at the authorities, on a plain construction of this section, it is not possible to accept the contention of Mr. Gupte that a workman means a person who was employed at the date when the dispute was referred by Government under S. 10(1)(c). Mr. Gupte contends that if a workman has already been dismissed, no industrial dispute can be referred with regard to his dismissal to the industrial court. Now, the definition of "workman" does not indicate that the workman must be employed at a particular moment of time. What is emphasized is that he must be employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward; in other words, the definition is intended to point out what the nature and characteristic of a person are who can be deemed to be a workman within the meaning of the Act. In our opinion a workman as defined in this sub-section means any person who is employed at any time in an industry. If the satisfies the definition of "workman" under S. 2(s), then whether he can be raise an industrial dispute or not must be judged by the definition of "industrial dispute" given in the S. 2(k). Therefore, in order to determine whether an industrial dispute has been properly raised or referred, one must read S. 2(k) and S. 2(s) in conjunction. If, therefore, the dispute is the result of a difference between employers and workmen or an employer and a workman and that dispute is connected with regard to employment or non-employment or the terms of employment or with the conditions of any person, then the dispute as such can be referred by Government under S. 10(1)(c) and in respect of which the industrial court can assume jurisdiction.

11. What is urged by Mr. Gupte is that the only dismissed workman in respect of whom an industrial dispute is raised is a workman who has been dismissed during the pendency of an industrial dispute. Therefore, the rather curious contention urged that the definition of "workman" limits the jurisdiction of the industrial court to try only those disputes with regard to dismissed workmen who have been dismissed during the pendency of a dispute, but is a workman is dismissed prior to the raising of the dispute, then the industrial court has no jurisdiction to entertain that dispute. To analyse that argument in a different way, what Mt. Gupte urges is that if a workman is dismissed he cannot raise any dispute with regard to his own dismissal because the industrial dispute must follow upon his dismissal, but if some other dispute is pending and he is dismissed, he can raise a dispute with regard to his dismissal. The result of accepting this contention is apparent even to Mr. Gupte himself and therefore he is compelled to say that undoubtedly this shows a rather serious lacuna on the part of the legislature in enacting this Act. But before we accuse the legislature of being guilty of serious blemishes in the drafting of a statute, it is the duty of

the Court to see whether a fair and reasonable interpretation can be put upon the language used by the legislature bearing in mind the object which the legislature had in placing a particular piece of legislation on the statute book. There is no reason whatever, looking to the definition of "workman" to restrict the expression "employed" to the point of time which Mr. Gupte suggested it should be restricted. So long as the workman was employed by the employer against whom he wishes to raise the industrial dispute and the dispute is of the nature required by the definition of "industrial dispute," he is a workman falling within the definition of S. 2(s). Turning to the authorities, reliance is first placed on a decision of this Court in *Narendra Kumar v. All-India Industrial Tribunal*. (1952) 55 Bom. L.R. 125. What we were considering there was the proper interpretation to be placed upon the expression "any person" used in S. 2(k). We realised that the legislature in that section had used a wider expression than the expression "workman" used in the earlier part of that sub-section, and what was urged before us was that the expression "any person" was so wide that no restriction should be put by us upon construing that expression. We negatived that contention and we pointed out that the expression, "any person" must be understood as implying two important restrictions and the two restrictions were that the dispute with regard to any person must be a controversy in which the workman raising it against his employer is directly and substantially interested and it must also be a grievance which the employer was in a position to remedy. Now, in this case it so happens the reference was sought by the trade union and not by the appellants themselves and therefore Mr. Gupte relies on this decision for the proposition that as the reference was by the trade union it must be with regard to a question of non-employment of any person as construed by us in this decision, and Mr. Gupte says that this worker who was dismissed before the dispute cannot satisfy the definition of "any person." It is difficult to understand why the principle laid down by us in this decision does not apply to the facts of the case before us. Assuming that the trade union was raising the dispute on behalf of any person, in that controversy the trade union was vitally interested and the grievance that they made, viz., that the employer has wrongfully dismissed the employee, was a grievance which could have been remedied by the employer. Therefore, both the conditions laid down by us in that decision are satisfied.

12. Reliance is then place on a judgment of the Federal Court in *Western India Automobile Association Vs. The Industrial Tribunal*, . That was a judgment given in appeal against a judgment of this Court, and the only question that arose before the Federal Court, as indeed it arose before us, was whether the labour courts had jurisdiction to order reinstatement of a dismissed servant, and it was in that connection that the Federal Court was called upon to consider the expression "employment" or "non-employment" used in S. 2(k). Now it so happened that in that case the worker was dismissed pending an industrial dispute and the question arose with regard to his reinstatement, and therefore the Federal Court had to consider the definition of "workman" given in S. 2(s) in

the light of the latter part which includes, as already pointed out, the case of a workman dismissed during the pendency of a dispute. The decision of the Federal Court does not lay down the proposition for which Mr. Gupte is contending that when a workman is dismissed he would fall with the definition of "workman" given in S. 2(s) only if he is dismissed during the pendency of an industrial dispute.

13. Mr. Gupte then argued that if that be the correct view, then it was unnecessary for the legislature to provide for the case of a workman who had been dismissed during the pendency of an industrial dispute. In our opinion, it was very necessary that that case should be provided for, because but for that extension of the meaning of the expression "workman" an industrial court would have no jurisdiction to entertain an application with regard to the dismissal of a workman which had taken place after the industrial dispute had been raised and which was pending before it. Therefore, this latter part of the definition of "workman" extends the meaning of workman and extends the ambit of jurisdiction of the Industrial Court. Instead of reading this latter part of the definition as an extension of the meaning of the expression "workman," Mr. Gupte wants us to read it as a qualification or a limitation upon the meaning of the word "workman" or rather as a proviso to what the legislature has already indicated earlier in S. 2(s). That, in our opinion, is an entirely wrong cannon of construction. The legislature, in the first place, gives the meaning of the expression "workman" and then, because a certain case does not fall will also fall in the definition already given of the expression "workman." Therefore, in our opinion, it would be wrong to confine the case of dismissed workman to the latter part of S. 2(s). In our opinion, the case of a dismissed employee who wishes to raise an industrial dispute falls directly within the definition of "workman" and it is only in cases where a workman has been dismissed pending an industrial dispute that we must look to the latter part of the definition of S. 2(s). In our opinion, both the industrial court and the Industrial Appellate Tribunal had jurisdiction to decide the dispute with regard to the two appellants. In our opinion, therefore, with respect, the learned Judge was in error in holding that the Industrial Appellate Tribunal had no jurisdiction.

14. The result is that the appeal must succeed. The order of the learned Judge will be set aside and the order of the Industrial Appellate Tribunal restored.

15. Respondent 1 must pay the costs of the appellants throughout; Mr. Kantawala's clients to bear their own costs.

16. Liberty to the appellants' attorneys to withdraw the sum of Rs. 500 deposited in Court.