
(1955) 08 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 1507 of 1955

M.D. Thakar

APPELLANT

Vs

Labour Appellate Tribunal and Another

RESPONDENT

Date of Decision : 18-08-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 227
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 22
Industrial Disputes Act, 1947 — Section 25H

Citation : AIR 1957 Bom 46 : (1955) 57 BOMLR 1148 : (1956) ILR (Bom) 37

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

Bench : Division Bench

Advocate : K.T. Sule and D.S. Nargolkar, for the Appellant; Crawford Bayley and Co., P.P. Khambata and N.A. Palkhivala, for the Respondent

Judgement

Chagla, C.J.—This is a petition challenging an order passed by the Labour Appellate Tribunal granting permission to the second respondent to retrench 126 of their workmen. The few facts which lead up to this petition may be stated. On 27th May 1955 the second respondents made an application for retrenchment of 142 of their workmen to the Labour Appellate Tribunal u/s 22, and the ground put forward by them was that they wanted to shift their factory which was in Bombay to Chinchwad in Poona as they wanted to extend their factory.

The Tribunal granted the application. A petition was presented against this order to this Court and this Court on the 30th June 1955 quashed the order. On the 4th July 1955 the second respondents applied to the Labour Appellate Tribunal that their application should be further heard and considered. The application was heard and permission was granted in respect of 126 workmen, and this is the order that is now sought to be challenged by this petition.

2. The first ground which is a novel ground and which has been very ingeniously argued by Mr. Sule is that in law once an order has been quashed by the High Court on a writ of certiorari, no further order can be made on the application. It

is contended that the result of quashing the order is to put an end to all proceedings connected with the application on which the order was made; that the record having been sent for the record remains with the High Court and no further action can be taken in relation to that record.

The argument on the face of it seems a little startling, but Mr. Sule has urged that there is high authority for the proposition and we must seriously consider it. Before we consider the authority let us be clear in our minds as to the nature of a writ of certiorari. It is a high prerogative writ which had its origin on historical grounds in England. But the purpose it serves in England now is that it enables a superior Court, a Court of record, to correct the orders and decisions of inferior Courts and inferior Tribunals discharging judicial functions.

If an order is made without jurisdiction or if a Court or a Tribunal refuses to exercise jurisdiction vested in it in law, or if there is an error of law patent on the record, the High Court in England by means of the writ of certiorari corrects the errors in jurisdiction or in law of inferior Courts and Tribunals. But it is equally clear and well established that the superior Court does not act as a Court of appeal. It does not substitute its own order on the merits of the case for the order which it quashes of the inferior Court or Tribunal.

If the order is quashed the inferior Court or Tribunal is left at large to pass any proper order in the light of the decision of the High Court. If, on the other hand, the High Court refuses to interfere on a writ of certiorari and discharges the rule and dismisses the petition, then the order of an inferior Court or Tribunal stands and assumes the necessary finality. But whether the High Court quashes the order or dismisses the petition, it exercises a limited jurisdiction and that jurisdiction under no circumstance can be comparable to the jurisdiction exercised by the High Court on the Appellate Side or even in its revisional powers under the Civil Procedure Code.

3. We had occasion to point this out in a decision reported in Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay, . There Mr. Justice Shah quashed the order of the Labour Appellate Tribunal and remanded the matter to the Tribunal for hearing and when the matter came in appeal Mr. Justice Bhagwati as he then was, and myself pointed out that no substantive order can be made by the High Court when it quashes the order of a judicial tribunal on a writ of certiorari, and we further pointed out that the High Court was not concerned with what would or should happen after the order of the Appellate Tribunal was quashed.

A further point must be borne in mind in connection with the power of the High Court to deal with subordinate Courts and Tribunals. A very wide and extensive power is conferred upon the High Court under Art. 227 of the Constitution, a power which has never been exercised and Can never be exercised by the High Court in England. When the High Court exercises its jurisdiction under Article 227 of the Constitution it is exercising a supervisory jurisdiction and although it may

be loath to interfere lightly with the decisions of Courts and Tribunals which are made final by law, it has undoubtedly the power not only to quash the orders made by these Courts and Tribunals but to pass substantive orders in place, of the orders it has quashed or set aside.

Therefore it is necessary to bear in mind, whenever a case of interference with a decision of a Labour Court or Tribunal comes up, whether the High Court is acting in exercise of jurisdiction in respect of a high prerogative writ or is acting under Article 227 of the Constitution.

4. In the case before us, when the matter came to the High Court, Mr. Justice Bavdekar and Mr. Justice Shah obviously dealt with the matter as if it was a writ of certiorari and all that they did was to quash the order of the Labour Appellate Tribunal. No substantive order was passed by the learned Judges; indeed they did not intend to do so because they gave certain directions to the Labour Appellate Tribunal as to how the matter should be dealt with. Therefore the learned Judges intended that the matter should be finally disposed of by the Labour Appellate Tribunal.

Mr. Sule says it was open to the learned Judges to remand the matter to the Labour Appellate Tribunal under Article 227 and because they have not done so the Labour Appellate Tribunal had no jurisdiction to deal with the matter. If the learned Judges had dealt with the matter under Article 227 undoubtedly they could have passed this order, but as they chose to act under Article 228 and quash the order of the Tribunal on a writ of certiorari, in view of our decision in *Mahomed Usman v. Labour Appellate Tribunal (A)*, with respect, they acted correctly and did not give any direction for rehearing to the Labour Appellate Tribunal.

But it is difficult to understand what would be the fate of the application made by the second respondents if on the order being quashed by the High Court the application did not survive and no further effective order could be made on that application. All that the High Court did was to quash a particular order made on the application of the second respondents by the Labour Appellate Tribunal. The High Court did not deal with the application, nor did it pass any substantive order on that application.

Therefore, on the order being quashed the application was again at large and some effective order had to be made by some authority. Therefore, in our opinion, the Labour Appellate Tribunal had jurisdiction, indeed, it was its duty so to act, to deal with the application when the second respondents company asked the Labour Appellate Tribunal to dispose of the application it had made.

5. The authority on which Mr. Sule relies is an old decision of the English Court reported in *Overseers of the Poor of Walsall v. London & North Western Ry. Co.* (1878) 4 AC 30. Mr. Sule was frank enough to concede that although this case was noted by several authorities both in England and in India it was never cited for the proposition for which he was contending before us. Indeed he had even to

concede that although he had made researches in all the text books on high prerogative writs, he did not come across anywhere a proposition that once an order of a subordinate Court or Tribunal had been quashed, that Court or Tribunal had no jurisdiction to deal further with the matter.

But he says that the proposition clearly emanates from the decision on which he is relying and if this decision is still good law, then we must follow this decision. The decision is of the House of Lords, a very high authority, and we should indeed be extremely reluctant to take a different view from the House of Lords on a matter which would be much better known to English Judges and Jurists dealing with high prerogative writs than to us here to whom such a writ is a foreign growth.

Before we look at the observations on which reliance is placed we should look at the facts in the context of which the House of Lords made certain remarks. The overseers of Walsall assessed the property of the respondents at a particular rate. The respondents disputed that rate and they appealed to the Borough Quarter Sessions and the Borough Quarter Sessions ordered that the rate be amended by reduction of the amount.

The matter went to the Queen's Bench Division and it confirmed the order of the Borough Quarter Sessions. From the decision of the Queen's Bench Division an appeal was preferred to the Court of Appeal and the Court of Appeal held that it had no jurisdiction to hear the appeal. The matter went to the House of Lords who held that the decision of the Queen's Bench Division was subject to appeal, and at page 44 Lord Penzance says:

""But as was well pointed out by the learned counsel for the Appellants the certiorari itself bringing up the proceedings, independently of the order subsequently made upon it, put an end to all further jurisdiction in the Court of Quarter Sessions to deal with the matter. Therefore the Judges of the Queen's Bench then had the proceeding before them and could either quash it or could let it stand; but the Magistrates in Quarter Sessions were then functi officio; they could no longer deal with the matter either by way of affirming or of quashing the order." This is perfectly, with respect, correct because the Magistrates of the Quarter Sessions having made the order and the Queen's Bench Division having confirmed that order by discharging the rule for a writ of certiorari, the Magistrates became functi officio. Their order having been confirmed, they could not interfere with that order or deal with that order as the application of the respondents for reducing the rate had been heard and finally disposed of by the Magistrates.

It is in this connection and under these circumstances that Lord Penzance made these observations, and, as we have already stated earlier, that is the true position when the High Court dismisses a petition for a writ of certiorari, thereby finally confirming the order challenged. Reliance is also placed on the observations of Lord O'Hagan. The learned Law Lord says:

"The order is absolute, and all people are bound and expected to obey it without, as I understand any farther intervention from the Quarter Sessions." This observation is relied upon for the contention that the High Court having quashed the order of the Labour Tribunal that order cannot be in any way interfered with by the Labour Appellate Tribunal. But the Labour Appellate Tribunal is not interfering with the order of the High Court. On the contrary it is respecting that order and carrying out its directions.

It could only be said of the Labour Appellate Tribunal that it was interfering with the order if the High Court had confirmed the order and dismissed the petition for a writ of certiorari presented by the second respondents in the first instance. Therefore in our opinion there is no force in that contention put forward by Mr. Sule.

6. The second contention urged by Mr. Sule is that at the rehearing the second respondents made out a new case on the affidavit which they presented, and according to Mr. Sule the Labour Appellate Tribunal had no jurisdiction to permit the second respondents to make out such a new case. Whether we are acting under Article 226 or Article 227, it is an impossible contention to put forward that this Court can interfere with the discretion exercised by a Tribunal in permitting a party to add to his case or amend his case or alter it in certain particulars.

The only ground on which this Court can interfere is that a reasonable opportunity was not given to the other party to meet this new case, and it is not suggested by Mr. Sule that when this new affidavit was filed he was prevented in any way from meeting that new case and dealing with it.

7. Finally, it is urged that on merits the order of the Tribunal is insupportable and it has not acted within the ambit of Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950. In order to understand the decision of the Labour Appellate Tribunal it is necessary to see what directions exactly were given by Mr. Justice Bavdekar and Mr. Justice Shah, on the first petition.

The learned Judges took the view that the Labour Appellate Tribunal had approached, the matter u/s 22 from a wrong angle. The only factor that the Tribunal had considered was whether a case had been made out for the closing of the factory in Bombay. The learned Judges therefore opined that the true approach to the matter was not whether the second respondents were compelled to close their factory in Bombay and open a new factory at Chinchwad, but whether a prima facie case had been made out for terminating the services of their workmen, i.e. whether there was any difficulty in regard to the Company employing the workmen in similar jobs in the new Poona factory, and therefore the learned Judges held that question before the Tribunal was and should have been as to whether the services of the employees could not be continued and in their judgment they stated that unless the Tribunal considers and answers this question it cannot possibly be said that they had determined what they had to determine before granting the permission. It is in the light of this judgment that

we must look at the decision of the Tribunal.

8. The second respondents made an offer to employ these workmen whom they wanted to retrench in their factory at Chinchwad and they were prepared to employ them on certain terms and conditions and these terms and conditions were set out in black and white and placed before the Tribunal. The Tribunal considered this offer a fair offer and it came to the conclusion that the workmen were not justified in not accepting the offer and therefore it dealt with the question that the High Court had asked it to deal, viz. whether the services of the employees could not be continued, and by reason of the refusal of the offer by the workmen the conclusion it came to was that the services of the employees sought to be retrenched could no longer be continued by the employers.

In the first place, Mr. Sule has made an attempt to satisfy us that in fact the offer made by the employers was not a fair offer. We are not really concerned with that question. It is not for us to consider whether, the offer was fair or not; it was for the Tribunal; unless *prima facie* on the face of the offer it was clear that the Tribunal had erred and had come to a perverse conclusion. But we have carefully considered the offer made by the employers and we frankly cannot take the view which has been pressed upon us by Mr. Sule that the offer is not a fair offer.

9. There are five terms set out in this offer and the term which is objected to is term (1) where the employees are asked unconditionally to accept employment at the wages and on the terms and conditions offered by the Company at Chinchwad, and what Mr. Sule says is that this would really be a sort of slavery bond to be signed by the workmen because by agreeing to this term they would be giving up their right to agitate for higher and better wages at Chinchwad.

It seems that the wages paid to employees in Bombay are higher than the wages paid at Chinchwad -- at least that is the case of the respondents-- and the contention of the employees is that if the wages, at Chinchwad are lower they are not adequate wages and fair wages and they had a right to raise an industrial dispute with regard to those wages. If the employers were compelling the employees to give up an important right of theirs, we would certainly have considered whether this was not a fit case for interference.

But in Clause 5 of the terms of offer the second respondents have solemnly agreed that by this settlement the workmen only give up the right to claim special treatment by reason of the fact that they had been previously employed in Bombay. In other words, the only concession that the employees are asked to make is that if they raise an industrial dispute and if they question the fairness of the wages paid to them at Chinchwad, they should not rely on the fact that they were already in service of the second respondents in Bombay and they had earned certain wages and they had been in service for a particular period.

It does not seem to us that this insistence on the part of the second respondents is unfair or unreasonable. The second respondents agreed that the notice of termination should be withdrawn, that there should be no break in the continuity

of service of the employees, but what they say is that

"we can only pay you such wages as are proper wages in Chinchwad and not in Bombay, but if you think those are not proper wages you can raise an industrial dispute and if the Industrial Court decides we should pay higher wages of course we would be bound to pay those wages."

Well, it is not for us to decide whether the workmen should or should not accept these terms, but if they have not chosen to accept them they cannot then say that no case for their retrenchment has been made out by the second respondents. What the employees have been insisting upon is that they should be treated as if they were transferred from Bombay to Chinchwad. Normally, words have not much magic, but in this case the word "transfer" has undoubtedly some magic because that is the one word on which the parties have not succeeded in agreeing, and the reason is obvious because by insisting on the word "transfer" the employees want to introduce in the controversy which may arise in future their right to receive higher wages because they have been transferred from the Bombay factory to the Chinchwad factory.

Mr. Sule says that the Tribunal in paragraph 6 of its judgment has observed:

"This would obviously lead to an unsettled state of affairs in the new business which is opening in Poona and would have a disruptive effect on labour in the new establishment"

Mr. Sule suggests that by this sentence the Tribunal has expressed an opinion that it would not be right on the part of the Poona labourers to agitate for their rights. We do not read this sentence to have that meaning. All that the Tribunal says is that if the Bombay Labourers go to Poona and insist on higher wages on the strength of their transfer, that may lend to difficulties and troubles which would not lead to a harmonious working in the factory.

But whether the Tribunal is right or wrong in the conclusion it came to, all that we have got to consider on this petition is whether their decision is A decision with jurisdiction and whether there is any error apparent on the face of the record.

We neither see any want of jurisdiction in the Tribunal in the order that they have made, nor any error which is apparent on the face of the record.

10. One further point was mentioned by Mr. Sule in passing and he rightly did not press it because there is no substance in it, and that was with regard to Section 25H of the Industrial Disputes Act which is a new section dealing with the right of employees who have been retrenched. Mr. Sule says that these employees were sought to be retrenched on the 30th of June 1955 and the new factory was to be started on the 1st of July 1955, and u/s 25H there was a duty cast upon the second respondents to give first preference to these very workers whenever the second respondents would be proposing to take in their employ any persons after their retrenchment, and Mr. Sule says that this proves the mala

fides of the second respondents in retrenching the employees and starting a new factory the very next day.

We really fail to see what bearing Section 25H has on the question we have to consider. Whatever right the employees may have u/s 25H has nothing whatever to do with the decision of the Tribunal. The only question that the Tribunal had to consider was whether the second respondents had made out a prima facie case for retrenching their employees. Being satisfied with that prima facie case and having given permission to retrench, if the employees are retrenched, whatever rights they may have u/s 25H are not affected by that decision.

Nor do we see how the fact that the Bombay factory was to be started at Chinchwad on the 1st July would establish a case of mala fides on the part of the second respondents. The Tribunal has not considered the question of mala fides in the second order because under the directions of the High Court it had to consider only one question to which we have drawn attention, and having considered that one question it has come to the conclusion that the second respondents had made out a prima facie case for retrenching their employees.

11. The result is that the petition fails and must be dismissed. No order as to costs.

12. Petition dismissed.