

(1952) 02 MAD CK 0015
In the Madras High Court
Case No : Writ Petition No. 17 of 1952

M.K. Ranganathan and Others	Vs	APPELLANT
The Madras Electric Tramways (1904) Ltd. and Another		RESPONDENT

Date of Decision : 12-02-1952

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7
Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1952 Mad 659 : (1952) 1 LLJ 772 : (1952) 2 MLJ 805

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : A. Ramachandran, for Row and Reddy, for the Appellant; C. Doraiswami, for King and Partridge and V.P. Sarathi, for Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, J.—This is an application for issuing a writ of certiorari to quash the order of the Labour Appellate Tribunal of India at Bombay.

The petitioners who are 46 in number were workmen employed by the Madras Electric Tramways Ltd. On the 17th of February 1950 some of

the workers met the Agent of the Company and discussed with him their disputes relating to bonus for the year 1949, reinstatement of 13

discharged men and the cancellation of fine on the motormen. After some discussion they dispersed. On the afternoon of 20th February, a large

number of workers gathered near the entrance and passages leading to the Agent's room. The management contended that the adjourned meeting

was fixed to take place on the 18th whereas the labourers stated that it was adjourned to 20th. On the 20th, the Agent refused to receive their

representatives unless the five representatives who met him on the 18th came again.

The labourers insisted upon two of their leaders, Ranganathan and Subramaniam to be members of the deputation. The Agent refused to meet

them as they belonged to an Association banned by the Government. In the evening the Agent asked them to disperse and even threatened to bring

in police help if they did not go outside the office building. Though the labourers left the office building they spent the night in the open space

nearby. Next morning some other workers joined them. The strikers were estimated to be about 200 strong. On the 22nd instead of giving to the

workers the time-sheets the management gave them certain memoranda wherein it was stated that time-sheets would not be given until the

explanation called for was submitted and accepted by the management. At about 9-30 or 10 a.m. the Deputy Commissioner of Police came to the

spot and persuaded the Agent to receive the deputation. The workers met the Agent but the meeting did not yield any successful result. The Agent

explained to them the difficulties of the management to meet out their demands but the labourers were dissatisfied and they did not leave the

premises.

The management wrote to the Commissioner of Police requesting him to take necessary steps to remove the strikers. At 6 p.m. on the 22nd the

police arrived on the scene and arrested 51 men who were sitting in the maidan. During this period the workers were shouting slogans ""Down with

the Agent"", ""Down with the Labour Officer"", and ""Down with the Traffic Manager"" and were also creating noise which must have disturbed the

office working. But there was no violence and no untoward event happened. The strike involving about 100 illiterate labourers, whether their

grievances were true or only imaginary went off peacefully. The arrested persons were produced before the Presidency Magistrate. The

Magistrate found all the 51 persons guilty under Sections 71(16) and 75 of the City Police Act and sentenced them to one month's rigorous

imprisonment under each count with the direction that the sentences should run concurrently. The Magistrate held that they behaved in a disorderly

manner in the office of the Madras Electric Tramways Ltd.

Section 71(16) relates to the affixing or causing to be affixed of a bill, document

or paper upon any building without the consent of its owner or in any manner defacing or disfiguring the building. Section 75 of the Act relates to violent, disorderly or indecent behaviour in any Court, office or station. The Magistrate held that the workers pasted or caused to be pasted on the company's walls notices bearing their slogans and demands without the consent of the Madras Electric Tramways Ltd. the owner of the building. In revision the High Court set aside the convictions on the ground that no reasonable opportunity was given to the accused persons to defend themselves and that they had no fair trial. The petitioners were acquitted. On the 13th of March 1950 the workers approached the management and requested to reinstate them on the ground that the High Court had acquitted them of all the charges. The management gave them extension of time for submitting their explanation. A form of charges framed also appears to have been handed over to them. On the 14th of March 1950 all the workers replied stating that the charges were vague. After some correspondence the labourers reiterated their objections to the charges framed and also communicated their request to adjourn the enquiry till the disposal of the criminal revision case in the High Court. The Agent passed an order on the 10th of April dismissing the workers on the ground that they are guilty under the company's Standing Order No. 24(3). Subsequently the enquiry was reopened. Fresh enquiries were started with fresh charges. Finally they were dismissed on the 22nd of May 1950. On the 20th of September 1950 the Government of Madras in their G. O. Ms. No. 3730, Development, referred the dispute between the workers and the management in respect of the reinstatement of the workers to the Second Industrial Tribunal, Madras. Sri T. D. Ramaiya held an elaborate enquiry and gave his award which was notified by the Government on the 18th of December 1950. The Tribunal did not find that there was any violation of the principles of natural justice in the course of the enquiry or that the management had been guilty of victimization or unfair practice or that it had been moved by ulterior motive in coming to its decision. The Tribunal found that the workers should not have been asked to answer the charge of wilful neglect of duty under Standing Order No. 24(3) though he held that the charge of insubordination was made out. He pointed out that there was no evidence

against any of the workers that they in any manner interfered with the loyal workers of the company. He found that they were guilty of disobedience of the Agent's order directing them to leave the company's premises. He could not find any excuse for their shouting of slogans, drawing of caricature of the Agent and defacing the walls by writing slogans and demands and the annoyance and disturbance caused. He took notice of the circumstance that there were no assaults or acts of intimidation or picketing or interference with non-strikers.

He also pointed out that the management had conceded that there was no damage or injury to person or property of the company. Looking at the entire picture of events from the 17th of February 1950 to the events of the 22nd of February he was of the opinion that though the workers indulged in an illegal strike for which the management could have taken reasonable and appropriate action, there was no ground whatever to visit them with the punishment of dismissal. On that finding he directed that the petitioners be reinstated but declined to grant them any back pay or allowances. The management preferred an appeal to the Labour Appellate Tribunal of India at Bombay. The Appellate Tribunal allowed the appeal in respect of the present petitioners.

The workers filed an application for issuing a writ of certiorari to the Bombay High Court. Shah J. quashed the order of the appellate Tribunal but a Division Bench of the Bombay High Court allowed the appeal against the order of Shah J. holding that the High Court of Bombay had no jurisdiction to entertain a writ as the subject matter was outside Bombay High Court. The present petition has, therefore been filed in this Court for quashing the order of the Labour Appellate Tribunal of India.

2. The learned counsel appearing for the management raised before me two preliminary points. He contended that the petitioners have other adequate remedies and, therefore, following the usual practice this Court should not issue a writ of certiorari. He also raised the plea that the High Court of Madras had no jurisdiction to entertain this application as the Tribunal whose order is sought to be quashed is not situated within the territorial jurisdiction of this Court. The first contention is based upon the provisions of Article 136 of the Constitution of India which read as follows:

Notwithstanding anything in this chapter (Chapter IV) the Supreme Court may in its discretion, grant special leave to appeal from any judgment,

decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

It is contended that the petitioners could have preferred an appeal against the Judgment of the Appellate Tribunal to the Supreme Court and they

having failed to do so would not be entitled for the issue of a writ of certiorari. It is true that the writ of certiorari will not be issued if a party has

other effective remedies but under Article 136 of the Constitution of India the Supreme Court's residuary power to grant special leave, in my view

cannot be an effective remedy which the petitioners could have resorted to, for, apart from the fact that there is no right of appeal to the petitioners

and the granting of special leave is within the discretion of the Supreme Court, it is not likely that the Supreme Court will grant special leave unless

there are extraordinary circumstances, I cannot, therefore, accept the first contention.

Nor am I satisfied that there are any merits in the second contention either. It is indeed curious that such a contention should have been raised by

the party who objected to the jurisdiction of the Bombay High Court to entertain the writ petition on the ground that the proper Court is the

Madras High Court and having succeeded on that point should now question the jurisdiction of this Court. The argument was based upon the

provisions of Article 226 of the Constitution of India which reads:

Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to

issue to any person or authority including in appropriate cases any Government within those territories, directions, orders or writs, including writs in

the nature of "habeas corpus", mandamus, prohibition, "quo warranto" and certiorari, or any of them for the enforcement of any of the rights

conferred by Part III and for any other purpose.

It is said that the Tribunal is not within the territory in relation to which the High Court exercised jurisdiction. Before I consider this argument some

relevant facts may be stated:

3. The Appellate Labour Tribunal though it has its head office in Bombay is itinerant and holds its sittings in different parts of the country. It also

held a sitting within the jurisdiction of this Court in connection with an appeal filed by the first respondent and also disposed of some interlocutory

applications in connection with that appeal. Further the dispute arose in the territory within the jurisdiction of this Court and all the parties to the

dispute reside within such a territory. In "RYOTS OF GARABHANDO v. ZAMINDAR OF PARLA- KIMEDI," ILR (1944) Mad 457, the

Judicial Committee had elaborately considered the question whether the Madras High Court could issue a writ of certiorari quashing the order of

the Revenue Board fixing fair and equitable rent in respect of lands in three villages belonging to the Zamindar of Parlakimedi in Ganjam district.

At page 497 their Lordships observed:

The question is whether the principle of that case can be applied in the present case to the settlement of rent for land in Ganjam merely upon the

basis of the location of the Board of Revenue as a body which is ordinarily resident or located within the town of Madras or on the basis that the

order complained of was made within the town. If so, it would seem to follow that the jurisdiction of the High Court would be avoided by the

removal of the Board of Revenue beyond the outskirts of the town and that it would never attach but for the circumstances that an appeal is

brought to or proceedings in revision taken by the Board of Revenue. Their Lordships think that the question of jurisdiction must be regarded as

one of substance and that it would not have been within the competence of the Supreme Court to claim jurisdiction over such a matter as the

present by issuing certiorari to the Board of Revenue on the strength of its location in the town. Such a view would give jurisdiction to the Supreme

Court in the matter of the settlement of rents for ryoti holdings in Ganjam between the parties not otherwise subject to its jurisdiction which it would

not have had over the Revenue Officer who dealt with the matter at first instance.

The above passage indicates that the jurisdiction to issue a writ does not depend upon the mere location of a tribunal but depends upon the

subject-matter and the parties to the dispute in regard to which such a tribunal purports to exercise jurisdiction. To put in other words though the

tribunal is situated outside the territorial jurisdiction of the High Court if it purports to exercise jurisdiction in regard to the parties or the subject-

matter which are within the territorial jurisdiction of the High Court the, tribunal

must be deemed to have functioned within the jurisdiction of the High Court. But it is said that the Judicial Committee were not considering a case where the subject-matter and the parties are within the jurisdiction of the High Court but the tribunal whose order is sought to be quashed is situate outside its jurisdiction. But the principle laid down in that decision, namely, that the question of jurisdiction must be regarded as one of substance if applied would support the aforesaid view.

The jurisdiction conferred by Article 226 of the Constitution is to protect the fundamental and other rights of parties within the territorial jurisdiction of the High Court. The Article does not expressly say that the authority or tribunal interfering with such rights should reside physically within the territorial jurisdiction. If a tribunal or authority exercises jurisdiction within the territories affecting such rights it may reasonably be construed that the authority or the tribunal functioned within the territorial jurisdiction of the High Court and therefore, is amenable to its jurisdiction. Further in this case it is not necessary to invoke any fiction as the appellate tribunal though it has its headquarters at Bombay is an itinerant body functioning in different parts of the country and indeed in this case it functioned during some part of the enquiry at any rate within the territorial jurisdiction of this Court. I, therefore, hold that this Court has jurisdiction to issue a writ of certiorari against the order of the Labour Appellate Tribunal.

4. Learned counsel for the petitioners argued that the Appellate Tribunal has no jurisdiction to entertain the appeal against the order of the Second

Industrial Tribunal directing reinstatement of certain workers. The Industrial Disputes (Appellate Tribunal) Act, 1950 (Act XLVIII (48) of 1950)

came into force on 23-5-1950. Section 7 of Act (XLVIII (48) of 1950 confers a right of appeal to the Appellate Tribunal from an award or

decision of the Industrial Tribunal subject to certain conditions. The section reads:

"Subject to the provisions of this section an appeal shall lie to the Appellate Tribunal from any award or decision of an Industrial Tribunal if (a) the

appeal involves any substantial question of law; or (b) the award or decision is in respect of any of the following matters namely: (1) Wages, (2)

bonus or travelling allowance, (3) any contribution paid or payable by the employer to any pension fund or provident fund. (4) any sum paid or

payable to or on behalf of the workman to defray special expenses entailed on

him by the nature of his employment, (5) gratuity payable on discharge, (6) classification by grades, (7) retrenchment of workmen, (8) any other matter which may be prescribed.

The order directing reinstatement does not, therefore, come under any of the heads narrated in Clause (b) of Section 7 of the Act. Therefore, an

appeal will lie to the Appellate Tribunal only if the appeal involves any substantial question of law. The point, therefore, is whether there was an

appeal before the Appellate Tribunal in the present case involving any substantial question of law. But before I consider that question it will be

convenient to dispose of the contention raised by the respondent that, whether there was a substantial question of law, was a question within the

jurisdiction of the Appellate Tribunal and whether it held rightly or wrongly in regard to the existence of such a question of law this Court cannot

question that finding. To put in other words the contention was that the question whether the condition conferring jurisdiction on the Appellate

Tribunal existed or not was within the exclusive Jurisdiction of that tribunal itself. I cannot agree.

The law on the subject is succinctly stated in Halsbury's Laws of England. Vol. 9 at page 881 as follows:

The case is more difficult where the jurisdiction of the Court below depends not upon some preliminary proceedings, but upon the existence of

some particular fact. If the fact be collateral to the actual matter which the lower Court has to try, that Court cannot by a wrong decision with

regard to it give itself jurisdiction which it would not otherwise possess. The lower Court must, indeed, decide as to the collateral fact in the first

instance but the superior Court may upon certiorari inquire into the correctness of the decision and may quash the proceedings in the lower Court if

such decision is erroneous or at any rate if there is no evidence to support it. On the other hand, if the fact in question be not collateral but a part of

the very issue which the lower Court has to inquire into certiorari will not be granted although the lower Court may have arrived at an erroneous

conclusion with regard to it." It was contended that the present case falls within the second part of the aforesaid statement, namely, that the

question whether there is a substantial question of law is not collateral but a part of the very issue which the Appellate Tribunal in this case has to

enquire and therefore the writ will not be granted. When a statute confers conditional jurisdiction on a tribunal, it cannot by wrongly deciding with regard to the existence of that condition clutch at jurisdiction which it has not. The condition in this case, namely, whether there is a substantial question of law is not part of the issue to be decided by the Appellate Tribunal. The existence of a substantial question of law and the solution of that question are essentially different. The existence of such a question is, therefore, collateral to the actual matter to be decided by the Appellate Tribunal. Though it has preliminary jurisdiction to decide whether such a question exists to enable it to solve the question raised, whether such a question existed conferring jurisdiction on the Appellate Tribunal is subject to the scrutiny of the High Court in a writ of certiorari, I would, therefore, hold if there was no point involving any substantial question of law the Appellate Tribunal would have no jurisdiction to entertain the appeal.

5. The next question is whether the appeal before the Tribunal was one involving a substantial question of law. Before it is answered it will be

relevant to consider what the words "substantial question of law" mean. A Full Bench of this Court in "SUBBARAO v. VEERAJU", 1951 2

M.L.J. 222 , recently decided that point. The learned Judges were construing the words "substantial question of law" occurring in Article 138 of

the Constitution of India. The learned Chief Justice summarised his view on the meaning of the said words at page 227 as follows:

It is neither possible nor useful to attempt to exactly define terms like "Substantial" "reasonable" and "just and equitable". Ultimately it resolves

itself into their meaning that the Court considers to be substantial, reasonable or just and equitable. The use of the adjective "substantial" makes it

clear that any question of law as such would not justify the grant of a certificate u/s 110. It must be a substantial question that is to say, the question

must, have some substance, i.e., worth or merit.

Bearing this in mind consideration of the authorities which I have cited leads to the following general principles. When a question of law is fairly

arguable, when there is room for difference of opinion on it, then such a question would be a substantial question of law. If this Court thought it

necessary to deal with a question of law at some length and discuss alternative

views which can be taken on the point, then, I think such a question would be a substantial question. When a point of law is practically covered by a decision of the highest Court, say, like the Privy Council or the Supreme Court then it would not be a substantial question. If the general principles to be applied in determining a question are well-settled a mere application of such principles would not involve a substantial question of law. I am inclined to hold that when a particular set of facts can lead to alternative findings in law, then a substantial question of law would be involved. If the principle to be applied or the point of law arising in the case is not well established, then certainly that would be a substantial question of law. With great respect to the learned Judges who appear to hold to the contrary, I am of opinion that if there is conflict of judicial opinion among the High Courts and there is no direct decision of the highest Court on any question of law, then that would be a substantial question of law, though the decisions of the particular High Court of which leave is sought might have been uniform on the question. That fact may be a very good ground for dismissing, a. second appeal if the lower Courts, had followed the rulings of the High Court, but for an application for leave to appeal to the Supreme Court, I think the very fact of divergence of opinion among the High Courts is conclusive evidence of the existence of a substantial question of law.

I find more or less a similar statement of the principles in the recent decision of the Bombay High Court in Kaikhushroo Pirojsha Ghiara Vs. The C.P. Syndicate Ltd., .

The only answer to the question that we can usefully give is that any question of law affecting the rights of parties would not by itself be a substantial question of law. An important or difficult question would, of course, be a substantial question but even if a question is not important or difficult if there is room for reasonable doubt or difference of opinion on the question, then it would be a substantial question of law within the meaning of Article 133 of the Constitution of India.

Applying the aforesaid principles can it be said that the appeal before the Appellate Tribunal involved a substantial question of law. To ascertain

whether such a substantial question of law was involved it is necessary to notice what was the view expressed by the Second Industrial Tribunal

Madras. It did not hold that the management had been guilty of victimisation or unfair labour practice or was actuated by any ulterior motive in

coming to its decision. It also found that the workers indulged in an illegal strike and that they were shouting slogans and that they did not leave the

company's premises when they were told more than once to do so and that they were also shouting slogans, drawing caricatures and defacing the

walls of the company's premises. He also found on the evidence that the attitude of workers and their general behaviour was quite correct on the

17th though it was somewhat rowdy on the 20th. It was further found that there were no assaults or acts of intimidation or picketing or interference

with non-strikers. There was also no damage or injury to the property or person of the company.

Taking the entire picture of events the tribunal was of the view that the punishment of dismissal was rather harsh. He, therefore, directed the

reinstatement of the dismissed workers but without back pay. The question of law that arose on those findings was whether when there was no

victimisation or unfair labour practice, a tribunal could interfere, having regard to all the circumstances with the discretion of the management in

dismissing the labourers, on the ground that the punishment was unduly harsh. On the question there does not appear to be any conflict of opinion

between the various labour tribunals.

6. In "BUCKINGHAM AND CARNATIC MILLS LTD. v. THEIR WORKERS", 1951 2 L L J 314 (Cal), the Appellate Tribunal observed as

follows:

If after scrutiny on the aforesaid lines it is found by the Tribunal that it ought not to interfere with the findings of the management that the charge has

been proved the tribunal must next consider whether it should interfere with the punishment. The management with the knowledge and experience

of the problems which confront it in the day to day work of the concern, ordinarily ought to have the right to decide what the appropriate

punishment should be, but its decision is liable to be revised if the tribunal is of opinion that the punishment "is so unjust that remedy is called for in

the interest of justice". It must, however, be remembered that it is essential that the matter should not be viewed altogether subjectively from the

point of view only of the employer or employee but also objectively in the

interest of industry for bringing about a harmony in the relationship between the two." In the present case the tribunal did not contravene this principle. Even the Appellate Tribunal in the present case made the same observations in regard to the question of law raised before them.

Ordinarily the management, acting "bona fide" and with knowledge and experience of the problems which confront it in the daily work of the concern, ought to be considered to be well-qualified to Judge what the appropriate punishment should be. But the rule that the punishment given by the management shall stand, is subject to this qualification; that the punishment must not be unduly excessive for the particular offence; and here again the tribunal should not substitute its own judgment for the judgment of the management unless it is apparent that the requirements of discipline and good conduct would not be prejudiced if a lesser punishment were awarded. Each case must, of course, be decided on its own merits; and no two cases are likely to be completely alike, but it is essential that these matters should not be viewed altogether subjectively from the point of view of the employee or of the employer, but also objectively in interests of discipline and good management. Applying these tests to the case before us we are satisfied that the tribunal below was not justified in interfering with the decision of the management to dismiss these employees.

The Tribunal in the present case applied the very same principles though it did not say in so many words. A perusal of the entire judgment indicates that the tribunal had bestowed careful consideration on the question of punishment. The tribunal has not ignored the interests of discipline and good management but having regard to the entire picture, the conduct of the management, the behaviour of the workers, the stress and, strain of the situation, the controlled action of the labourers and particularly the fact that no injury or damage to the person or property was caused and similar other factors held that the punishment of dismissal was excessive. The appeal, therefore, did not in my view involve any substantial question of law.

The only question was whether pursuant to the accepted principles the tribunal exercised its discretion correctly in directing reinstatement of the labourers without back pay.

7. When there is a limited right of appeal on a substantial question of law, if the appellate tribunal does not differ on the question of law but goes

into the facts and interferes with the discretion of the lower tribunal which it has undoubtedly under the statute, the appellate tribunal will be

indirectly clutching at jurisdiction which the statute has not conferred on it. When the statute conferred a right of appeal with regard to specified

disputes the appellate tribunal has by a circuitous procedure interfered with the findings of the tribunal in regard to other matters which are made

final by the statute. The Appellate Tribunal in this case, has, therefore, no jurisdiction to entertain the appeal.

8. The next question is whether the principle of law laid down by the Appellate Tribunal is correct. The following passages in the judgment of the

Appellate Tribunal bring out its view on the question raised:

On the face of it the punishment is in keeping with the nature of the offence, and the Tribunal below has not found that there was any violation of

the principles of natural justice in or about the enquiry or that the management had been guilty of victimisation, or unfair labour practice or was

moved by any ulterior motive in coming to its decision.

There is here a substantial question of law affecting the industries in general, namely, the grounds on which a tribunal would be justified in

interfering with the decision of the management in or about the internal administration of the concern.

What we have to consider is whether interference by the tribunal below with the decision of the management was justified. Ordinarily, the

management, acting bona fide and with knowledge and experience of the problems which confront it in the daily work of the concern ought to be

considered to be well-qualified to Judge what the appropriate punishment should be. But the rule that the punishment given by the management

shall stand, is subject to this qualification that the punishment must not be unduly excessive for the particular offence; and here again the Tribunal

should not substitute its own judgment for the judgment of the management unless it is apparent that the requirements of discipline and good

conduct would not be prejudiced if a lesser punishment were awarded. Each case must of course be decided on its own merits, and no two cases

are likely to be completely alike; but it is essential that these matters should not be viewed altogether subjectively from the point of view of the

employee or of the employer, but also objectively in interests of discipline and

good management.

On a combined reading of the aforesaid passages the law enunciated by the Appellate Tribunal may be put thus:

9. In the absence of any violation of principles of natural justice or victimisation or unfair labour practice on the part of the management the Tribunal

cannot interfere with the discretion exercised by the management in dismissing the employees unless it is apparent that the punishment inflicted is

unduly excessive and it is apparent that the requirements of discipline and good conduct would not be prejudiced if a lesser punishment is awarded.

The excessive character of the punishment should be judged not only from the subjective standpoint of the employer and employee but also from

the objective stand-point namely whether the punishment is necessary in the interests of discipline and good management. To put in other words

the position of the management is equated to that of a domestic Tribunal and the jurisdiction of the Tribunal is confined only to matters extraneous

to the merits of the punishment except when it is unduly harsh and disproportionate. The question, therefore, is whether the principles so stated are

correct and this limitation of the Tribunal's jurisdiction invoking the doctrine of domestic Tribunal incorrect and consistent with the labour

legislation.

To give a satisfactory answer to this question it is necessary to notice briefly the history of the labour legislation, the nature of the disputes which the

legislation was intended to settle and the scope of the enquiry before the Tribunals constituted. The history of the long drawn struggle between the

employer and the labourer in other parts of the world need not be detailed. It is enough to state that the labourer's rights to organise themselves

and to protect their interests in case of victimisation by their employers and their right to resort to strike as a means to enforce their demands are

now well recognised. Social legislation was introduced in other countries to smoothen the labour disputes in the interests of not only the parties

concerned in the dispute but also to bring about, industrial peace and in the interests of the public at large who would ultimately be affected. India

also followed suit.

Pursuant to that policy the Industrial dispute (employment) standing Orders, 1940, the Industrial Disputes Act, 1947 and other local statutes of a

like nature were passed. The Industrial Disputes Act of 1947 provides for constitution of special tribunals to settle industrial disputes. The nature of the disputes that would fall within their jurisdiction the procedure to be followed, the scope of enquiry before such Tribunals and the range of their Decision are all regulated by the provisions of the said Act. Unlike civil Courts they are not confined within the bounds of legal rights but can shape their decisions to meet exigencies of varying situations. They work in the realm of arbitration rather than in that of law. Contractual terms will not bind them. They adjust the rights between two contracting parties, the employer and the labourer on an equitable plane.

10. The Industrial Disputes Act of 1947 lays down the scope and also the limits of the Tribunal's jurisdiction. The preamble to the Act gives wide scope when it says that it is expedient to make provisions for the investigation and settlement of industrial disputes and for certain other purposes appearing therein. The Industrial Dispute has been defined in Section 2 Clause (k):

""Industrial Disputes"" means any dispute or difference between employers and employers or 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."" If a dispute as defined arises between the employer and the workmen the State Government is authorised to refer the same to an industrial Tribunal for adjudication. The Industrial Tribunal settles disputes between the parties and gives a binding award.

11. The Tribunal's rights to direct reinstatement of discharged workmen fell to be considered by the Federal Court in AIR 1949 111 (Federal Court) . The question for determination in that case was whether the definition of the expression ""Industrial dispute"" given in the Act included within its ambit a dispute in regard to reinstatement of dismissed employees. As regards the scope of the Act the learned Judges observed at page 115 as follows: ""The Act is stated in the preamble to be one providing for the investigation and settlement of industrial disputes. Any industrial dispute as defined by the Act may be reported to Government who may take such steps as seem to it expedient for promoting conciliation or settlement. It may refer it to an industrial Court for advice or it may refer it to an industrial Tribunal for adjudication. The legislation substitutes for free bargaining

between the parties a binding award by an impartial tribunal.

Later on they proceed to say: "Any dispute connected with employment or non-employment would ordinarily cover all matters that require

settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other question and it

would also include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workers." The

learned Judges held after considering the relevant provisions that the Industrial Tribunal has power in appropriate cases to direct reinstatement of

the dismissed workmen. Finally they concluded the judgment with the following words:

The tribunal has jurisdiction to adjudicate on the dispute and it can be trusted to do its duty and it cannot be said that it will give the reinstatement

relief unless it thinks it is necessary to do so.

12. In "Labour disputes and collective bargaining" (Vol. II) by Ludwig Teller at page 852, the teamed author says as follows:

Section 319: "In several cases involving discriminatory discharges or strikes caused or prolonged by unfair labour practices, the contention has

been advanced that because of violent or unlawful conduct upon the part of the employees involved the Board ought not to require their

reinstatement. The Board's power of reinstatement is discretionary in nature, to be exercised in the light of all the circumstances of each case in the

manner best calculated to effectuate the policies of the Act. In the exercise of that discretionary power, the Board considers the probable effect of

the restoration of the working relationship upon future relations between the employer and the employees." It is, therefore, clear that the Industrial

Disputes Act substitutes for free bargaining between the parties a binding award by an impartial tribunal. The tribunal is not bound by contractual

terms between the parties but could make a suitable award for bringing about harmonious relations between the employers and the workers. In

such a set up, in my view, the doctrine of domestic tribunal cannot easily fit in. When an impartial tribunal working in the realm of arbitration and

unfettered by contractual terms entered into between the parties is empowered to settle the disputes between the parties it would appear

incongruous that one of the parties to the dispute could sit in judgment over the

other and bind the hands of the tribunal empowered to decide impartially the dispute between them. It would obstruct the work of the tribunal and prevent it from discharging its difficult task of bringing about harmonious relations between the parties.

I would, therefore, hold that the industrial tribunal is not fettered by any such limitation on its power. The only limitation on its power is to bring about harmonious relationship between the employers and the workmen. Having regard to all the circumstances the tribunal can direct reinstatement if it thinks that it is necessary to the interests of industrial peace. I am, therefore, of opinion, that the principle laid down by the Appellate Tribunal is not correct. As the Appellate Tribunal interfered with the order of the Tribunal on the question of rein statement of workers in regard to which no appeal lies to it I have no option but to issue a writ quashing that order. I hereby quash the order of the Appellate Tribunal. The petitioners will have their costs. Advocate's fee Rs. 200/-.