

(1991) 07 MP CK 0046
In the Madhya Pradesh High Court
Case No : M.P. No. 1385 of 1989

M.P. Kendriya Sahakari Bank Mahasangh and Another APPELLANT
Vs
Assistant Labour Commissioner and Another RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 2(10), 2(12)
Industrial Disputes (Amendment) Act, 1965 — Section 2A
Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 12(4), 2

Citation : (1992) JLI 450

Hon'ble Judges : S.K. Dubey, J;K.K. Verma, J

Bench : Division Bench

Advocate : H.N. Upadhyaya, for the Appellant; R.A. Roman and Ramji Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—The Petitioners, aggrieved of an order (Annexure P/9), passed by Respondent No. 1/Assistant Labour Commissioner, Gwalior Division, Gwalior, whereby the Respondent No. 1 refused to initiate conciliation proceedings in relation to a claim of seniority, promotion and arrears or wages of Petitioner No. 2 Kailash Chandra Saxena, have preferred this petition under Article 226 of the Constitution of India.

2. The Petitioner No. 2 who is employed in the Jila Sahkari Kendriya Bank, Gwalior/Respondent No. 2 as a Class IV employee, made a representation for being promoted under Rule 5 of the M.P. District Co-operative Central Bank Employees Service (Terms of Employment and Working Conditions) Rules, 1982, to the post of Class III and claimed seniority over two employees, who were promoted and were juniors to the Petitioner, and arrears of 25 days, but the claim having not been accepted, the Petitioner No. 2 moved an application (Annexure P/7) before Respondent No. 1 for taking the dispute in conciliation. After this, the Petitioner No. 1, a registered trade union, of which Petitioner No. 2

is a member, vide Annexure P/8-B, dated 9.4.1988 and Annexure P/8-A, dated 27.4.1988 espoused the dispute of Petitioner No. 2 and made a prayer vide Annexure P/8 to allow the trade union to represent in conciliation proceedings through one Ganesh Dutt Pandey, Vice President of Petitioner No. 1. The Respondent No. 1 vide Annexure P/9 dated 2.8.1989 refused to initiate the conciliation proceedings, observing that the dispute does not fall within the scope or Section 2(k) of the Industrial Disputes Act, 1947 (for short, the "Act") directed Petitioner No. 2 to espouse the dispute through the trade union to bring the same within the purview of Section 2(k) of the Act.

3. The Petitioners challenged this order on the ground that the trade union already started participating and espousing the dispute; Respondent No. 1 the Conciliation Officer, was bound to initiate the conciliation proceedings and to investigate the dispute in accordance with Section 12 of the Act and, on failure or a settlement, to submit the report u/s 12(4) of the Act, to the appropriate Government for making a reference u/s 10 of the Act

4. The Respondent No. 2 Bank, supported the order of the Conciliation Officer and contended that the Petitioners are not entitled to invoke the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution as the Conciliation Officer, whose functions are purely administrative and not judicial, is bound neither to carry out an investigation in the manner of judicial proceedings nor by the rules of natural justice; the Conciliation Officer acting u/s 12 of the Act functions neither judicially nor quasi-judicially, hence, his order cannot be subjected to a writ of certiorari.

5. Shri H.N. Upadhyaya, learned Counsel for the Petitioners; Shri R.A. Roman, learned Government Advocate for Respondent No. 1, and Shri Ramji Sharma, learned Counsel for Respondent No. 2, were heard.

6. To appreciate the submissions made by the learned Counsel and the grounds raised in the petition, reference to Section 2(k), 2A, 10 and 12 the Act would be necessary.

7. Section 2(k) defines "industrial dispute" which 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." A reading of this definition shows that the dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and 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.

8. In case of Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, the Supreme Court while deciding a claim of a dismissed employee for reinstatement and the dispute as an "industrial dispute" within the meaning

of Section 2(10) and Section 2(12) of the CP. and Berar Industrial Disputes Settlement Act (23 of 1947), had an occasion to consider the definition of "industrial dispute" in Section 2(k) of the Act, and setting out three possible views,-namely, (i) a dispute which concern only the rights of individual workers, cannot be held to be an industrial dispute; (ii) a dispute between an employer and a single employee can be an industrial dispute as defined in Section 2(k), and (iii) a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen, on the question whether a dispute by an industrial workmen may be regarded as an industrial dispute within the meaning of Section 2(k) of the Act, observed:

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

Similar observations were made by the Supreme Court in case of *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*,

9. As the laid down, that an individual dispute could not per se be an industrial dispute but could become one if it was taken up by a trade union or a substantial number of workmen of the establishment, created hardship for individual workmen who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by union or any appreciable number of workmen to espouse their cause, to obviate this difficulty, the Parliament engrafted Section 2A in the Act by the Industrial Disputes (Amendment) Act, 1965 (35 of 1965) w.e.f. 1.12.1965 which reads:

2-A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute. ~ Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute.

10. A Division Bench of this Court in case of *Management of Katkona Colliery of Western Coalfields Ltd. Surguja v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur* 1978 J.L.J. 603 : 1978 MPLJ 722, observed that the effect of Section 2A is that an individual workman who was discharged, dismissed or retrenched or whose services were otherwise terminated, can be given relief without its being necessary for the relationship between the employer and the whole body of employees being attracted to the

dispute, and the dispute becoming a generalised one between labour on the one hand and the employer on the other land. Such individual dispute because of the Legislative fiat contained in S-2-A becomes an industrial dispute. It is not necessary in such case to make a demand on the Management for making the dispute an industrial dispute, nor it is now necessary that such a dispute should be sponsored by the trade union or a substantial number of workmen.

11. As regards other disputes of an individual workman, the position remained the same. Unless those disputes are espoused by a trade union or a substantial number of workmen having an interest therein, it cannot fall within the definition of "industrial dispute" in Section 2(k). Existence of an industrial dispute is an essential requisite for exercising the duties and functions by a Conciliation Officer. Section 12 of the Act reads as under:

12. Duties of Conciliation Officers. -- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the depute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances, relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at

(5) If, on a consideration of the report referred to in sub- section (4), the appropriate Government is satisfied that there is a case for reference to a Board (Labour Court, Tribunal or National Tribunal) it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government/

Provided that, subject to the approval of the conciliation officer the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

12. A bare reading shows that Section 12(1) confers a discretion on the Conciliation Officer to decide by subjective satisfaction for justifying in initiating the conciliation proceedings u/s 12 except the disputes which relate to public utility service; in that case after giving notice u/s 22 the Conciliation Officer has to hold the conciliation proceedings in the prescribed manner. In all other cases the subjective satisfaction has to be formed on some material or information before him that an industrial dispute exists or is apprehended which is a condition requisite for the Conciliation Officer to initiate and hold conciliation proceedings u/s 12(1). After notice to the employer u/s 12(2) for the purpose of bringing about a settlement, the dispute is investigated without delay.

13. But in the present case, the Respondent No. 1. considering that the individual dispute is not espoused by the trade union, did not initiate conciliation proceedings and investigate the dispute for bringing about a settlement In our opinion, this approach of the Conciliation Officer was erroneous, as the law is settled. In Shambu Nath Goyal Vs. Bank of Baroda, their Lordship of the Supreme Court on a perusal of the definition of "industrial dispute" in Section 2(k) of the Act, have in para 5 held:

A bare perusal of the definition would show mat where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person mere comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua rum unless of course in the case of public utility service because Section 22 forbids going on strike without giving a strike notice. The key words in the definition of "industrial dispute" are "dispute" or "difference". What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd. (1960) 1 All ER 274 at p. 279 at p. 279, Lord Denning while examining the definition of expression "trade dispute" in Section 2 (1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:

by definition a "trade dispute" exists whenever a "difference" exists and a difference can exist long before the parties became locked in a combat It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.

Thus, it would be clear that the Act nowhere contemplates that the dispute would come into existence in a particular, prescribed or specific manner. What is necessary to constitute an "industrial dispute" is that it should relate to one of the matters specified in Section 2(k) and should have been raised at the instance

of a body of workers.

14. As the facts clearly show that though the first application was made by Petitioner No. 2, later on, two applications were made by the trade union; the trade union also moved an application for representing the claim of Petitioner No. 2 by the Union's representative. Therefore, on facts, as the jurisdiction or the Conciliation Officer u/s 12 is founded upon existence or apprehension of an industrial dispute, the Conciliation Officer for his subjective satisfaction was bound to find out the existence of an industrial dispute as defined in Section 2(k) of the Act to enable him to start conciliation proceedings under the Act. That, the Conciliation Officer, in our opinion, failed to do so; apparently, the trade union not only applied for representing the dispute but positively espoused the dispute. Therefore, the Respondent No. 1 who was acting as Conciliation Officer, failed to discharge his functions and duties in accordance with Section 12 of the Act, and committed an error of law in refusing to take up the dispute. In such circumstance, in our opinion certainly this Court is entitled to exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution for issuing the writ in the nature of mandamus/certiorari commanding the Respondent No. 1 to act and perform his functions and duties within the sphere of Section 12 of the Act.

15. Shri Upadhyaya's contention that it is not necessary that before the date of making a reference the dispute should be espoused by a trade union, the appropriate government, after forming an opinion on the report of the Conciliation Officer u/s 12(4) may make a reference u/s 12(5) by an order in writing u/s 10(1) for adjudication of the Labour Court or the Tribunal, as the case may be, though the Conciliation officer and the appropriate Government perform their functions and duties in their different spheres in the manner laid down under Sections 12 and 10 of the Act, has a bearing. Section 10(1) of the Act reads as under:

10. Reference of disputes to Boards, Courts or Tribunals: (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing:

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.

The contention of Shri Upadhyaya is founded on a Supreme Court decision in case of Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, in which the Supreme Court while dealing with the definition of "industrial dispute" and an individual dispute turning into an industrial dispute, has observed:

The only condition for an individual dispute turning into an industrial dispute as laid down in the case of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. The parties to the reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman. It must follow that the existence of such an interest, evidenced by the espousal by them of the cause, must be at the date when the reference is made and not necessarily at the date when the cause occurs, otherwise, as aforesaid, in some cases a dispute which was originally an individual one cannot become an industrial dispute.

16. The Supreme Court in case of The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, while dealing with an objection about the invalidity of a reference of an individual dispute unless such a dispute is taken up by a union or a number of workmen under the same employer at the date of reference, has laid down that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of the reference the dispute was taken up or supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. Therefore, necessarily if the individual dispute acquires the character of an industrial dispute till the date of the reference, the reference by the appropriate Government is competent at that stage.

17. From the above, the correct legal position is well settled. It is not necessary that a dispute relating to an individual worker should be taken up by the trade union of the workmen or a substantial number of workmen from the very inception of that become an industrial dispute. The moment a cause is espoused by a substantial concern of the workman or a trade union of which the workman is a member, the dispute is transformed into an industrial dispute, and this is all that is necessary for a valid reference u/s 10(1) of the Act.

18. When, till the date of reference, the individual dispute can turn into an industrial dispute, applying the same principle, at the time of exercising the discretion by the Conciliation Officer for his subjective satisfaction, if there is material before him of an individual dispute turning into an industrial dispute, its apprehension or existence, the Conciliation Officer has to act discharge his functions within the spheres or Section 12 of the Act.

19. In the result, the petition is allowed and the order (Annexure P/9) is quashed. A writ is issued to Respondent No. 1 to take up the dispute as an industrial dispute and to perform his functions and duties as enumerated in Section 12 of the Act. As the dispute was raised as long back as in the year 1988, it is directed that the parties, i.e. the Petitioners and Respondent No, 2 shall appear before Respondent No. 1 on 20.7.1991. If the Respondent No. 1 exercises his discretion and initiates the conciliation proceedings, he shall complete his investigation and make all efforts to bring about a settlement. In case of failure to bring about a settlement, the Respondent No. 1 shall submit his report within a period of one month from 20.7.1991 to the appropriate Government, who, in turn, shall consider the report and shall proceed in accordance with law.

20. In the circumstances, parties to bear their own costs.