
(1996) 07 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 2017 of 1995 (J)

Nazrul Hassan

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 15-07-1996

Acts Referred:

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

Citation : (1997) 2 MPJR 104

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; Rajendra Menon, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

The petitioner is employed in one of the collieries of Western Coal Fields Limited respondent No. 2. By this petition under Article 227 he challenges the awarded 19.3.85 (Annexure -D) passed by the Central Government industrial Tribunal-cum-Labour Court No. 2, Jabalpur whereby the dispute concerning his classification on the higher post and for payment of salary of that post referred u/s 10 (1) (d) of the Industrial Disputes Act has been answered in favour of the petitioner as workman on merits but no relief has been granted to him on the ground that it was not proved that the individual dispute of the petitioner as workman was supported and sponsored by a substantial number of workmen employed in the Industry and represented by the Union namely Chhindwara Zila Koyala Khadan Karmachari Sangh.

The facts in necessary details of the case are as follows : The petitioner was working as Raising/Loading Mate. By order passed on 1.1.81 by the Manager of Rawan Wara Khas Colliery, the petitioner Nazrul Hassan Siddiqui was appointed and authorised to work as Traffic Incharge. His duties were setting the shifts, movement of tube, ensuring standard of loading etc. The petitioner continued to

work and discharged duties of Traffic Incharge and therefore, made a demand for being regularised on that post and payment of higher salary for the work discharged on that post. Since the employer did not accede to the demands, he raised a dispute through the above mentioned employees union. It was taken up in conciliation and ultimately a joint reference with regard to two employees was made and the petitioner was one of them. The term of reference were as under:

Whether the action of the management of Coal fields limited, in relation to their Rawan Wara Khan Colliery in not accepting the recommendations of the Distt. Medical Board, Chhindwara and declaring Shri Premdas Compounder unfit for service and not regularising Shri Nazrul Hassan as Traffic Incharge and paying his difference of wages from 1.1.1981 is justified ? If not, to what relief the workmen are entitled for ? (The underlined part of the reference is in relation to the conditions of service of the present petitioner.)

Before the Labour Court the respondent employer apart from contesting the case on merits raised an objection that the dispute referred was not an industrial dispute but was an individual dispute which can become an industrial dispute only when it is supported by substantial number of workmen employed and is espoused by a recognised union.

The learned Presiding Officer of the Labour Court by the impugned award held in favour of the petitioner workman that he worked as Traffic Incharge from 1.11.1981 to 25.2.83 and was entitled to be granted relief of classification and higher pay. The Labour Court however, refused to grant that relief by up-holding the contention of the employer, that Employees' Union at whose instance the dispute was referred failed to prove before the Labour Court, by producing necessary resolution of the Union, that a substantial number of workmen had supported the claim of the petitioner and thus the individual dispute had become a common cause to be referred as an industrial dispute. The petitioner's claim thus was rejected by the Labour Court on the sole ground mentioned above.

Shri Rohit Arya learned counsel appearing for the workman in this petition questions the correctness of the view expressed by the learned Presiding Officer of the Labour Court. He strongly relies on *The Associated Cement Companies Ltd. Vs. Their Workmen, ; Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others*, and *State of Bihar Vs. Kripa Shankar Jaiswal*, in support of his contention that espousal of an individual's case even by a section of the workmen through a registered trade union which seeks a reference of such dispute, is competent u/s 10 of the Act and it was not necessary for the union to have proved the fact by producing any formal resolution of the workmen in that regard.

The other contention advanced on behalf of the workman by learned counsel appearing for him is that the tribunal in going into the question of nature of dispute being an individual or industrial dispute went beyond the terms of the reference. It is submitted that the jurisdiction of the tribunal is restricted by the

terms of the reference and it could not go into the issues or disputes not referred to it.

Shri R. Menon learned counsel appearing for the employer supported the order of the tribunal and contended that in deciding a dispute referred, the tribunal can go into all incidental questions including one with regard to the competence of reference. The Tribunal committed no error in deciding the issues on the basis of evidence produced by the parties. The individual dispute of the workman having not been espoused and supported by substantial number of workmen in the industry it could not have been adjudicated upon as an industrial dispute. Strong reliance is placed on behalf of the employer on *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, , *Rajya Gramin Vikash Sansthan Vs. State of M.P. and Others*, , *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, , *Nellai Cotton Mills Vs. Labour Court & Another* 1965 (1) L.L.J. 9.5 (Madras) *State Transport Controller Vs. Industrial Tribunal & another* (8) 1965 (II) L.L.J. 376 (Orissa).

Having considered the contentions advanced on behalf of the parties and critically examined the case laws cited on the subject at the bar, I may at the outset take up the second question raised on behalf of the workman that the tribunal should not have gone beyond the terms of the reference and hold that the dispute referred was an individual dispute and was not proved to have become an industrial dispute by its espousal by substantial section of the workmen employed in the industry.

The decision of the Supreme Court in the case of *Hochitief Gammon (supra)* fully supports the contention on behalf of the employer that all questions incidental to the dispute referred, can be decided by the tribunal. The Division Bench of the this Court in the case of *Rajya Gramin Vikas Sansthan (supra)* also taken the view that incidental questions to the main or principal dispute are within the jurisdiction of the tribunal. The division bench also holds that the incidental matter would include whether on the facts placed before it an industrial dispute has really arisen within the meaning of Section 2(a) of the I.D. Act. For the aforesaid reasons, the tribunal committed no error in allowing the employer to raise an objection in deciding the same that the dispute referred did not constitute an industrial dispute.

Now reverting to the main contention advanced that the disputes referred having not been supported by a substantial section of workmen, was not a industrial dispute, it is necessary to refer to the relevant part of the award containing the reasons for denying the relief to the workmen. This is what the tribunal stated against the case of the workman in paragraph 8 of the award as under:

Since the right of the Union to espouse the case of these workmen so as to convert the individual dispute into an industrial dispute was challenged. It was necessary for the Union to establish that they have substantial following in the industry and further that a decision was taken either by resolution or by other

means supporting the espousal. In this regard mere sponsoring of dispute by the Union is not enough but it becomes necessary to enquire whether the Union which has sponsored the dispute can fairly claim a representative character in such a way that there would be a conversion of individual dispute into an industrial one. For the purpose of representative character it can be gathered from the strength of the actual number of workers sponsoring the dispute and that the facts that the dispute is supported by the workmen or members will have to be established either in the form of resolution of the Union or of the workmen themselves who are supporting the same.

Having thus held the tribunal then went on to conclude in paragraph 10 as under :-

Not only that but there is absolutely nothing to indicate that the members, assuming them to have so had supported the cause of these workmen either by resolution or otherwise and, therefore, in the absence of vital proof on this material point, it is not possible to conclude that the dispute which is in the nature of individual dispute assumes the character of an industrial one.

From the contention advanced by the parties main question that falls for consideration is whether the above reasons assigned by the tribunal in the award to deny relief to the workmen are sustainable in law. The reasoning that the individual dispute has to be supported by substantial number of workmen to convert it into an industrial dispute does not appear to be sound in law. The following observation of the Supreme Court in the case of Associated Cement Companies Limited (*supra*) may be noticed. In construing the provisions of Section 19 (6), Section 10, Section 18 read with Section 2 (a) of the Industrial Dispute Act the Supreme Court has held as under :-

Ordinarily an individual dispute which is not sponsored by the Union or is otherwise not supported by any group of workmen is not regarded as an industrial dispute for the purpose of the Act. A provision like that contained in S.33 A is of course an exception to this Rule. The basis of industrial adjudication recognised by the provisions of the Act clearly appears to be that disputes between employers and their employees would be governed by the Act where such disputes have assumed the character of an industrial dispute. An element of collective bargaining which is the essential feature of modern trade union movement is necessarily involved in industrial adjudication. That is why industrial courts deal with disputes in relation to individual cases only where such disputes assume the character of an industrial dispute by reason of the fact that they are sponsored by the union or have otherwise been taken up by a group or body of employees.

In the same decision of Associated Cement Companies Ltd. (*supra*) Supreme Court further went on to hold :

We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of

the workmen concerned; in other words, the majority rule on which the appellant's construction of S. 19 (6) is based is inapplicable in the matter of the reference of an industrial dispute under S. 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred for adjudication u/s 10.

The above decision of the Supreme Court in Associated Cement Company (Supra), the relevant part which is quoted above, makes the argument advanced on behalf of the employer unacceptable that for an individual dispute to become an industrial dispute a substantial number of workmen must support it and if a minority of workmen have supported it could not become an industrial dispute. In the case of News paper Limited (Supra) the evidence before the tribunal showed that an association known as "Leader Press Karmachari Sangh" had taken up the cause of individual workmen and sponsored it. It was held to be sufficient to make the industrial dispute to be an industrial dispute. The relevant part of the decision in News Papers Limited (supra) reads as under:

On this point there is a concurrent finding of both the Courts against the appellant. Chaturvedi, J. has recorded his conclusion that on the evidence adduced before him he was satisfied that there was an association known as Leader Press Karmachari Sangh and that the cause of respondents 3 to 5 had been sponsored by the said association. The same finding has been confirmed by the appellate Court.

Then it was urged that the association which sponsored the case of respondents 3 to 5 was an unregistered body and that made the reference invalid. Both the Courts have held and rightly, that it is not necessary that a registered body should sponsor a workman's case to make it an industrial dispute. Once it is shown that a body of workmen, either acting through their union or otherwise had sponsored a workman's case it becomes an industrial dispute.

Certain legal presumptions arise with an employees' union obtaining registration under the Trade Unions Act. In section 4 of the Trade Union Act any seven or more members of a trade union by subscribing their names to the rules of Trade union and by complying with the provisions of the Act may apply for the registration of the Trade union. The individual cause of the workman in this case was taken up by registered trade union and was espoused through the process of conciliation.

The appropriate government thought it fit to take up the individual dispute as espoused by the registered union with reference as an industrial dispute u/s of the I.D. Act. As has been held by the Supreme Court quoted above even if a small number of workmen take up an individual cause as a common cause industrial dispute arises. The issue raised by the employer with regard to the nature of the dispute was an incidental matter to the main dispute regarding conditions of service of the petitioner workman. In deciding that incidental issue, the tribunal ought not to have insisted on the union to have produced all their

registers and records to show that the case of the individual workman was supported by a section of the workmen. The very fact that the office bearers of the Union has sponsored the cause of the individual workman and that they were representing a registered trade union ought to have been taken to be sufficient material for holding that the individual cause was espoused by section of the workmen or the members of the registered trade union. The decision of the tribunal that it was necessary for the union to have established that they have substantial supporters in the industry and that a formal resolution was taken in the meeting of the union. That was not at all a requirement of law, and such on view is also not supported by the decisions of Supreme Court Cases (supra). In *State of Bihar Vs. Kripa Shankar Jaiswal*, same view has been reiterated to hold that a dispute becomes an industrial dispute even where it is sponsored by union which is not registered or where the dispute raised is by some only of the workmen. The part of the decision of the tribunal, therefore, in refusing relief to the workman on the ground that the dispute was not proved to have been sponsored or espoused by substantial number of workmen in the industry cannot be sustained and has to be set aside.

Coming now to the merits of the case, the tribunal has come to the conclusion that the petitioner was entitled to the relief of being treated as Traffic Incharge between the period from 1.1.81 to 25.2.83 and consequent payment of difference of salary for that period. Reliance is placed on behalf of the Workmen employed by Hindustan Lever Ltd. V. Hindustan Lever Limited 1984 (4) S.C. 392 which supports the view taken by the tribunal that work discharged on a promotion post even in officiating capacity by a workman, entitles him to raise a dispute which concerns his conditions of service and a claim for classification or promotion to that post and for payment of salary of that post can be raised in an industrial dispute. In the instant case the finding of the tribunal is in favour of the workman. In the period between 1.1.81 to 25.2.83 he worked on the higher post of Traffic Incharge. He was, therefore, entitled to grant of relief. The employer has to consider him for classification or promotion to the post of Traffic Incharge, and pay him the difference of salary for the work performed by him for the aforesaid period in question on the higher post.

In view of the discussion aforesaid the petition succeeds and is hereby allowed. The award of the Labour Court Annexure-D to the extent it holds against the petitioner that his individual dispute could not be redressed as industrial dispute is set aside. The decision of the tribunal on merits by recording a finding in favour of the workman is confirmed. The petition is allowed with a direction to the respondent employer represented by respondent 3 & 4 to classify the petitioner on the post of Traffic Incharge and pay him difference of salary for the work already performed by him on the post between 1.1.81 to 25.2.83.

In the circumstances, I make no order as to costs. The security amount if any deposited, be refunded to the petitioner.