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**(1956) 05 AHC CK 0019**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 1047 of 1955

Newspaper Ltd.

APPELLANT

Vs

State Industrial Tribunal and Others

RESPONDENT

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**Date of Decision :** 08-05-1956

**Acts Referred:**

Constitution of India, 1950 — Article 226

Factories Act, 1948 — Section 78, 79

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 3, 4, 8

**Citation :** AIR 1956 All 597 : (1957) 1 LLJ 32

**Hon'ble Judges :** M.L. Chaturvedi, J; Agarwala, J

**Bench :** Division Bench

**Advocate :** Brij Mohan Lal Srivastava, for the Appellant; S.N. Dwivedi and Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. This is a petition under Article 226 of the Constitution, The petitioner is the Newspapers Ltd. carrying on business of running daily newspapers and publication and sale of books. The petitioner has its own union of workers, known as the Newspapers Ltd. Employees' Union, which is registered and of which the majority of workers of the petitioner are members. There is another union named the Allahabad Press Workers' Union.

The workers of the different Presses at Allahabad including the petitioner are its members. Some time ago the Allahabad Press Workers Union without the authority of the News papers Ltd. Employees' Union made a representation to the Regional Conciliation Officer, Allahabad, for extending the number of leave-holidays to be observed in the petitioner's concerns beyond those already prescribed under its standing Orders. They alleged that more leave-holidays were allowed by a similar concern, namely. the Amrit Bazar Patrika, Ltd. and there was n" reason why the petitioner should not; allow the same number of leave-holidays.

2. The Regional Conciliation Officer entertained the petition and sent notice to the petitioner. In spite of objections raised by the petitioner, the Regional Conciliation Officer reported the matter to the State Government which by its notification No. 2267 (LC)/XVIII-LA-184 (ALR) 54, dated October 11, 1954, referred the following dispute for adjudication to the State Industrial Tribunal-

"Whether the leave, rules of Messrs. Newspapers Ltd. Allahabad, need revision? If so, with what details?"

The petitioner contested the jurisdiction of the Tribunal to entertain the dispute and to increase the number of leave-holidays prescribed under the Standing Orders of the petitioner. Another point urged by the petitioner was that the Press Workers' Union had no jurisdiction to refer the dispute to the, Regional Conciliation Officer and that this could only be done by the union of the petitioner's concern.

3. The State Industrial Tribunal repelled the contentions of the petitioner and gave an award dated 23-12-1954, holding that the number of leave-holidays sanctioned by the petitioner needed revision and increasing the number of leave-holidays to a certain extent.

4. An appeal by the petitioner against the award to the Labour Appellate Tribunal was unsuccessful.

5. The petitioner has, therefore, applied to this Court under Article 226 of the Constitution and has prayed that a writ of certiorari be issued quashing the award of the State Industrial Tribunal dated 23-12-1954, and the decision of the Labour Appellate Tribunal dated 26-8-1955, and that a direction be issued to the State Government not to implement the award of the State Industrial Tribunal.

6. Two points have been urged before us on behalf of the petitioner. Firstly that the Press Workers' Union was not competent to refer the dispute for settlement on behalf of the workmen of Newspapers Ltd. when there was a Union of the Newspapers Ltd. itself and secondly that the employees of the petitioner are bound by the Standing Orders made under the Standing Orders Act 20 of 1946 read with Sections 78 and 79 of the Factories Act and that no contention contrary to the provisions of the Standing orders can be raised or referred for decision to the State Industrial Tribunal and the State Industrial Tribunal and the Labour Appellate Tribunal had no power to go beyond the Standing Orders.

7. The source of the jurisdiction to refer disputes between employers and employees in industrial concerns is the Industrial Disputes Act (Act XIV of 1947 of the Central Legislature) supplemented by the various Provincial or State enactments on the subject. The Industrial Disputes Act 1947 defines an "industrial dispute" as

"any dispute or difference between employers and employees, 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."

It authorises the Central or the, State Government to appoint Conciliation Officers charged with the duty of mediating in and promoting the settlement of industrial disputes and also for the constitution of Boards of Conciliation for promoting the settlement of industrial disputes and Courts of Inquiry and Industrial Tribunals, (sections 3 to 7). It also empowers the Central or the State Governments to refer any industrial dispute to such Board, Court or Tribunal for adjudication, (Section 10). It prescribes the procedure, powers and duties of the various authorities mentioned above.

8. The Central Government has also passed an Act establishing a Labour Appellate Tribunal to hear appeals from awards or decisions of the State Industrial Tribunals, (see the industrial Disputes Appellate Tribunal Act of 1950).

9. "Industrial disputes" being a concurrent subject-vide list 3, item 22, the State of U. P. has also its own Industrial Disputes Act (U. P. Act No. XXVIII of 1947). The Act adopts the definition of an industrial dispute as given in the Central Act. By Section 3 it provides-

"If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may by general or special order, make provision for-

(a) .....

(b) for requiring employers workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

(c) for appointing industrial courts;

(d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order;

(e) for any incidental or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order:"

10. In pursuance of the authority conferred by Section 3, the U. P. State Government has made a general order No. U-464 (LL)/36 B-257 (LL)/1954 dated 14-7-1954, superseding an earlier order dated 15-3-1951. Paragraph 3 of this general order provides for reference of disputes to Conciliation Boards. It runs as follows:--

"An application for the settlement of an industrial dispute may be moved before the Conciliation Officer of the area concerned, in the form prescribed in the Schedule to this Order,

(i) by a workman or by

(a) a registered trade union of workmen or

(b) a Federation of such trade unions, or

(c) where no such union or Federation exists in relation to any particular concern or industry by the representatives, not more than five in number, of the workmen employed in that concern or industry, to be elected in that behalf by a majority of the workmen employed in the concern or industry, as the case may be, at a meeting held for the purpose or

(ii) by an employer or by .....

Provided also that, notwithstanding anything hereinbefore contained, a dispute may also be referred to the Conciliation Officer for settlement by the Labour Commissioner, U. P., or the State Government."

If the Conciliation Board is unable to bring about an amicable settlement between the parties the Chairman of the Board shall send to the State Government a full report setting forth the circumstances relating to the dispute (see paragraph 5 (3) ). Paragraph 11 of the order provides--

"Reference of dispute for adjudication where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time either of its own motion or after considering the report of the Conciliation Board made under Sub-clause (3) of Clause 5, or on an application made to it, by order in writing, refer any dispute to the Industrial Tribunal". ....

The decision or award is to be binding on the parties subject to the order made under the Industrial Disputes Appellate Tribunal Act, 1950.

11. In the present case the dispute was referred by the State Government in the exercise of the powers conferred by Sections 3, 4 and 8 of the U. P. Industrial Disputes Act, 1947, and in pursuance of the provisions of Clause 11 of G. O., dated 14-7-1954, mentioned above and it was also stated that in the opinion of the Governor it was necessary so to do "for the maintenance of public order and for maintaining employment."

12. In the present case the reference by the Press workers' Union was made under paragraph 3 of U. P. Government order dated 14-7-1954. Paragraph 3 (i) authorises a dispute to be referred to a Conciliation Board by (a) a registered trade union of workmen, or (b) a Federation of such trade unions. It is not expressly stated whether the registered trade union of workmen shall be of the particular concern or of an industry consisting of several concerns; but Clause (c) of the paragraph mentions--

"Whether no such union or Federation exists in relation to any particular concern or industry, by the representatives, not more than five in number, of the workmen employed in that concern or industry to be elected in that behalf by a majority of the workmen employed in the concern or industry as the case may be, at a meeting held for the purpose."

13. It seems reasonable to interpret Clauses (a), (b) and (c) together and it appears likely that in Clause (i) "workman" would mean "workman of a particular concern or industry" and in Clause (b) a "Federation of the trade unions" would mean a "Federation of the trade unions of the industry". The Press Workers' Union being a union of workmen of the industry, though not of the concern; would on this interpretation be entitled to make the reference.

But it is not necessary to make a definite pronouncement on this point as the proceedings would not be vitiated on this account because the State Government could! under para. 11 refer the dispute to the State Industrial Tribunal, either of its own motion or after considering the report of the Conciliation Board or upon an application made to it. The State Government having got the power, the reference of the dispute by it to the State Industrial Tribunal cannot be called in question.

14. Thus there is no force in the first contention of the petitioner. This brings us to the second contention .

15. The petitioner's concern is governed by the Factories Act, 1946 (Act No. LXIII of 1948) and the Industrial Employment (Standing Orders) Act, 1946 (Act No. XX of 1946). Both are Central Acts. Chapter VIII of the Factories Act deals with the question of Annual leave with wages. Section 78 of the Factories Act provides--

"The provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement or contract of service:

Provided that when such award, agreement or contract of service provides for a longer annual leave with wages than provided in this Chapter, the worker shall be entitled only to such longer annual leave."

Section 79 then provides for annual leave with wages. It then lays down the number of leave days to which every worker is entitled to get with wages. Reading Sections 79 and 78 together, two conclusions are obvious-- (1) that Section 79 provides for the minimum number of leave days with wages and (2) that such leave days may be increased by an award, agreement or contract of service. The award spoken of in Section 78 obviously includes an award made under the Industrial Disputes Act.

16. The Industrial Employment (Standing Orders) Act (XX of 1946) requires employers in industrial establishments formally to define the conditions of employment under them. The Act mentions matters which shall be provided for in the standing orders. These matters are given in the schedule to the Act. One of the matters thus specified is the conditions under which and the authority by which leave and holidays may be granted.

Standing Orders are made by the employer, then they are, sent to the certifying officer and the certifying officer sends the draft to the Union of workmen. In the

absence of the Union of workmen it is sent to the workmen of the Industrial establishment concerned! When objections, if any, have been heard, the certifying officer certifies the draft standing orders after making such modifications therein as may be necessary. An appeal is provided for against the order of the certifying officer. It is specifically provided in Section 4 that

"it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders."

All that they have to see is that the standing orders make provision for all matters set out in the Schedule and that the Standing Orders are otherwise in conformity with the provisions of the Act.

17. In pursuance of this Act the applicant had made certain standing orders. Standing Order No. 7 provides--

"Leave shall be admissible to workmen in accordance with the provisions of the Factories Act for the time being in force."

In accordance with the Standing Order and the Factories Act, the applicant allows 14 days privilege leave and 4 days casual leave in addition to 14 days festival holidays.

18. The workmen claimed 15 days casual leave, one month's privilege leave, 15 days medical leave on full pay and 15 days medical leave on half pay besides festival holidays, special leave and leave without pay.

19. The State Industrial Tribunal, after considering the leave granted by the other sister concerns, came to the conclusion that the standing orders of the applicant relating to leave rules required revision and that the privilege leave of 14 days allowed by the applicant, as laid down in Section 79 of the Factories Act, was sufficient. They allowed ten days' casual leave in a year and ten days medical leave on full pay on the completion of one year's service which may be accumulated up to three months, besides the fourteen days festival holidays already allowed by the applicant.

20. The employers and employees are normally bound by the terms of their contract of service agreed upon between them. The agreement stands modified by the standing orders. So long as the standing orders are not revised, both the employers and the employees are bound by them

But when there is a dispute between the employer and the employees, which falls within the definition of an Industrial dispute as defined in the Industrial Disputes Act, 1947, it is open to the Government concerned to refer the dispute for decision by an Industrial Board or Tribunal.

21. The Industrial Disputes Act defines an "industrial dispute" as a dispute or difference between the employers and employees 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. (Section 2, Clause (k) ).

Although both the employers and employees are bound by the Standing Orders for the time being, there is nothing in law to prevent anyone of them from disputing their fairness and since the dispute relating to leave falls within the purview of the expression "terms of employment" it is an industrial dispute.

21a. It may be noted here that the Industrial Employment (Standing Orders) Act itself shows that the certifying officer or the appellate authority under that Act does not adjudicate upon the fairness or reasonableness of any standing orders. This can be done by an Industrial Tribunal. When the State Government concerned refers the dispute to it under the U. P. Industrial Disputes Act, 1947, it refers it because it is of the opinion that

"it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment." (Section 3 of the U. P. Industrial Disputes Act).

22. In the present case the Governor of U. P. expressed his opinion in the notification by which he referred the dispute to the State Industrial Tribunal that "it is necessary so to do for the maintenance of public order and for maintaining employment."

The expediency of its reference to the Industrial Tribunal cannot be challenged in face of the Government's order referred to above. See the case of -- State of Madras Vs. C.P. Sarathy and Another, . The order of the Government could be challenged on the ground that there was no industrial dispute within the meaning of that phrase in the Industrial Disputes Act 1947 or that the State Government had not formed the opinion mentioned in Section 3 of the U. F. Industrial Disputes Act.

23. When once a dispute is referred to an Industrial Tribunal, the Tribunal is not strictly bound by the terms of the agreement between the parties or the standing orders, though it must respect the same so far as it can. It has to decide the dispute so as to secure the purpose for which the dispute is referred to them.

The adjudication under the Industrial Disputes Act is not bound by the strict law of master and servant or by the terms of the agreement between the employer and the employee. In this regard his power is larger than the power of an ordinary civil court. S'ee the case of -- AIR 1949 111 (Federal Court) .

But at the same time, as pointed out by the Supreme Court in -- "J, and K. J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur, , wide as the powers of adjudicators are, they are not absolute", and there are limitations to the ambit of their authority. Their powers are derived from the statute which creates them and they have to function within the limits imposed there and to act according to its provisions. They are not benevolent despots.

They must respect the pleadings of the parties and should not decide on irrelevant considerations or on points not raised before them by either party.

24. We may further add that they have to act reasonably and their decisions must be in accordance with the notions of social justice prevalent at the time.

25. In dealing with the question of revision of standing orders, the Tribunal can legitimately take into consideration similar rules prevailing in sister concerns in the same industry and to revise the standing orders and to allow reasonable modification of the same.

Where an Industrial Tribunal has acted within the limits stated above, this Court, in exercise of its power under Article 226 of the Constitution, will not substitute its own judgment and discretion for that of the Tribunal even though it feels that the order of the Tribunal might have been somewhat different from what it is. See the case of -- The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, .

26. In our opinion, the orders of the State Industrial Tribunal and of the Appellate Industrial Tribunal in this case cannot be challenged on any legal ground. There is no force in this application. It is dismissed with costs.