

(1969) 12 KAR CK 0011

In the Karnataka High Court

Case No : Writ petition No"s. 1737, 1872 and 2209 of 1966

P. Janardhana Shetty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-12-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 12 (1), 2 A

Karnataka Shops and Commercial Establishments Act, 1961 — Section 39

Citation : (1970) 20 FLR 355 : (1969) ILR (Kar) 581 : (1970) 2 LLJ 738 :
(1970) 1 MysLJ 191

Hon'ble Judges : M. Sadasivayya, J;Chandrashekhara, J

Bench : Division Bench

Judgement

Chandrasekhara, J.—These three petitions are similar and they raise common questions of law. They relate to the disputes arising out of termination of services of individual workmen by their respective employers who are the petitioners herein.

2. In these petitions, the petitioners have asked for striking down S. 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). They have also impugned the conciliation proceedings pending before the Labour and Conciliation Officer, Bangalore (hereinafter referred to as the Conciliation Officer) in respect of such disputes.

3. Respondent 4 in each of these petitions whose services were terminated, preferred an appeal under S. 39 of the Mysore Shops and Commercial Establishments Act, 1961 (hereinafter referred to as the Shops and Establishments Act), before the Commissioner of Labour in Mysore (hereinafter referred to as the Commissioner) who is the Appellate Authority under the said Act. After S. 2-A was inserted in the Act by the Industrial Disputes (Amendment) Act, 1965 (Central Act of 1965), the commissioner issued a circular (marked Exhibit III in each of these petitions) in which it was stated that a workman who is removed or dismissed from service by his employer, can get better reliefs

under the provisions of the Act than under the provisions of the Shops and Establishments Act. The circular advised workmen who had preferred appeals under S. 39 of the Shops and Establishments Act to consider the desirability of withdrawing such appeals and approaching the Conciliation Officer for taking up the matter under the provisions of the Act.

4. Respondent 4 in each of these petitions made an application for withdrawing his respective appeals preferred under S. 39 of the Shops and Establishments Act. Thereafter, the Commissioner directed the Conciliation Officer to take up the conciliation proceedings in respect of disputes between the respective employers and the employees relating to their dismissal or removal from service. Accordingly, the Conciliation Officer issued to the petitioner and respondent 4 in each of these petitions notices under S. 12(1) of the Act, read with rule 10 of the Industrial Disputes (Mysore) Rules 1957 requiring them to attend the proceedings before him. Feeling aggrieved by such notices, the petitioners have presented these petitions.

5. Mr. Viswanath Rai, learned counsel for the petitioners in all these petitions, advanced the following contentions :-

- (i) Section 2A of the Act is ultra vires of the Act;
- (ii) Section 2A is violative of Art. 14 of the Constitution.
- (iii) Section 2A has no application to a dispute arising from discharge, dismissal, retrenchment or termination of services, made prior to December 1, 1965.
- (iv) The Commissioner should have disposed of the appeals under S. 39 of the Shops and Establishments Act;
- (v) The Commissioner should not have issued the circular, exhibit III.
- (vi) The Commissioner had no competence to direct the conciliation office to take up conciliation proceedings under S. 12(1) of the Act; and
- (vii) The conciliation officer has no jurisdiction to take up conciliation proceedings.

6. In order to appreciate these contentions of Mr. Viswanath Rai, it is necessary to set out certain provisions of Act.

The long title of the Act reads :-

"An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".

The preamble of the Act reads :

"Whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing, it is hereby enacted as follows :-"

7. Section 2 of the Act contains definitions of certain words and expressions

occurring in the Act. Clause (k) of S. 2 defines "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.

8. Section 2A was inserted in the Act by the Industrial Disputes Amendment Act, 1965 (Central Act XXXV of 1965), which came into force from December 1, 1965, Section 2A reads :-

"2A Dismissal etc. of an individual workman to be deemed to be an industrial dispute - Where any employer discharges, dismisses, retrenches or otherwise terminates the service 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 nor any union of workmen is a party to the dispute".

9. Section 2(d) of the Act defines "Conciliation Officer" as a Conciliation Officer appointed under the Act.

10. Section 12 sets out the duties of Conciliation Officer.

11. Sub-section (1) of S. 12 provides, inter alia, that where an industrial dispute exists or is apprehended, the Conciliation Officer may hold conciliation proceedings in the prescribed manner.

12. Before insertion of S. 2A, the provisions of the Act were construed as having application to settlement of disputes involving the rights of workmen as a class and not disputes which merely touch individual rights of single workmen. In other words, such dispute must be between an employer on the one hand and the employees acting collectively on the other hand.

13. The meaning of the expression "industrial dispute" before the insertion of S. 2-A in the Act has been elucidated thus by the Supreme Court in *D. N. Banerjee v. P. R. Mukherjee*, (1952-53) 4 F.J.R. 443 :

"The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests such as wages, bonuses, allowances pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single

employee's case might develop into an industrial dispute, when as often happens, it is taken up by the trade union of which he is a member, and there is concerted demand by the employees for redress."

14. Again, in *Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan* 1956 11 F.J.R. 298, Venkatarama Iyer, J., who spoke for the Court said :

"Notwithstanding that the language of S. 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 workmen."

But S. 2-A has brought about a substantial change in the scope and scheme of the Act by enabling an individual workman, unaided by the union of employees or considerable section of the employees, to raise an industrial dispute, if such dispute is in respect of his discharge, dismissal or retrenchment or termination of his service.

15. Mr. Viswanath Rai submitted that the provisions of the Act are intended to give effect to the concept of collective bargaining by employees and that before the introduction of S. 2A, the Act provided for settlement of disputes between workmen as a class and their employer and not for settlement of a dispute between an employer and an individual workman. Mr. Viswanath Rai argued that S. 2-A which enables an individual workmen to raise an industrial dispute, in certain circumstances, is inconsistent with and repugnant to the concept of collective bargaining embodied in the Act and hence S. 2-A must be held to be ultra vires of the Act.

16. We are unable to see how a section of an Act can be said to be inconsistent with, and repugnant to, the object of the Act. The scope and scheme of an Act can only be gathered from the provisions contained in the Act. It is not permissible to say what the scope and scheme of an Act are by reading certain provisions only of that Act, and then to say certain other provisions of that Act are not in harmony with such scope or scheme. To ascertain the scope and scheme of an Act, we have to look into all the provisions therein.

17. Just as a proviso to a section may contain an exception to the rule set out in the main part of that section, certain section or sections of an Act may also provide for an exception to the general scheme contained in the other provisions of that Act. Just as the main part of a section and proviso there-to must be read together to ascertain the scope of that section, the rule contained in some sections of an Act and an exception contained in other section or sections of that Act together constitute the scheme of that Act.

18. As seen earlier, it is true that the provisions of the Act, other than S. 2A, provide for settlement of disputes between an employer and employees collectively and not disputes between an employer and an individual employee, unless such dispute is espoused or sponsored by the union of employees or a considerable body of employees and that S. 2-A makes an exception to such rule. But on that score S. 2-A cannot be said to be inconsistent with, or repugnant to, the Act.

19. That S. 2-A was not in the Act when it was originally enacted, but was introduced subsequently by means of the Amending Act, can make no difference for ascertaining whether there is any inconsistency or repugnancy. As pointed out by the Supreme Court in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, when a subsequent Act amends the earlier one in such a way as to incorporate itself, or a part of itself, into the earlier Act, then the earlier Act must thereafter be read and construed (except where that would lead to repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

20. As the long title and preamble of the Act indicate, the main object of the Act is to make provision for investigation and settlement of industrial disputes. It is not correct to start with any preconceived notion that the Act is intended to give effect to the concept of the collective bargaining only and that anything which is not a part of collective bargaining is outside the scope of the Act. The words "industrial dispute" occurring in the preamble of the Act, are wide enough to cover, as stated by Venkatarama Iyer, J. in *Central Provinces Transport Services Ltd. v. Raghunath (supra)* a dispute between an employer and a single employee. There is no reason to infer that S. 2A which provides for settlement of individual disputes between an employer and an individual employee in certain circumstances is outside the scope indicated in the preamble, namely, investigation and settlement of industrial disputes.

21. Moreover, it is well settled that the preamble of an Act is merely intended to indicate the main purpose of the Act and does not cover the entire ambit of the Act; the preamble cannot control the meaning or scope of any section in that Act; and when there is conflict between the preamble and the enacting portion, the latter shall prevail.

22. Mr. Viswanatha Rai referred to several passages in Ludwig Teller's treatise on Labour Disputes and Collective Bargaining. We do not consider it necessary to advert to these passages or the views of the learned author on labour disputes and collective bargaining because we are not concerned with any social doctrine or philosophy but with the limited question as to the validity of S. 2A which provides for settlement of a dispute between the employer and an individual employee in certain circumstances.

23. We shall now examine the contention of Mr. Viswanath Rai that S. 2A is ultra

vires of the Act. The term "ultra vires" simply means beyond powers or lack of power. An Act is said to be ultra vires when it is in excess of the power of the person or authority doing it. When it is said that a legislative enactment or any of its provisions, is ultra vires of the Constitution, it means that the Legislature which purported to enact it, exceeded the power conferred on it (the legislature) under the Constitution. When it is said that a rule is ultra vires of the Act, it means that the authority which purported to make the rule, exceeded the power conferred on it (such authority) under the Act.

24. How can a section of an Act be ultra vires of the Act ? That section is enacted by the same Legislature which enacted the rest of the Act. That Legislature did not derive from that Act its power to enact that section. On the other hand that Act is as much a creature of the Legislature as that section. We think it is a misnomer to say that a section of an Act is ultra vires of that Act.

25. As pointed out by the Supreme Court in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, when the validity of an Act is called in question, the first thing for the Court to do is to examine whether the Act is a law with respect to a topic assigned to the particular legislature which enacted it; if it is, then the Court is next to consider, whether, in the case of an Act passed by the Legislature of a State, its operation extends beyond the boundaries of that State; and if the impugned law satisfied both these tests, then finally the court has to ascertain if there is anything in any other part of the Constitution which places any letter on the legislative powers of such Legislature; the impugned law has to pass all these three tests.

26. What applies to a legislative enactment applies to every part of it including every section of it. Section 2A being inserted by the Industrial Disputes (Amendment) Act, 1965, which is Parliamentary enactment, the only two tests to be satisfied for that section being valid are :

- (i) whether that section is with respect to a topic assigned to Parliament; and
- (ii) whether it offends any of the provisions in Part III of the Constitution or restriction placed in any other part of the Constitution.

Entry 22 in List III of the Seventh Schedule to the Constitution, reads :

"Trade union, industrial and labour disputes."

27. The original Act, namely, the Industrial Disputes Act, 1947 is an Act coming within this Entry. We think the scope of this Entry is wide enough to include industrial and labour disputes between an individual employee and his employer.

28. As Parliament had legislative competence to enact S. 2A which deals with industrial disputes between an individual workman and his employer in regard to certain matters, S. 2A must be held to be valid, unless it is shown to violate any of the provisions of Part III of the Constitution or any of the fetters in any other part of the Constitution.

29. It was next contended by Mr. Viswanath Rai that S. 2-A of the Act is in valid on the ground of its offending Article 14 of the Constitution. Elucidating this contention, Mr. Viswanath Rai argued that S. 2A makes discrimination as between an individual workman who is discharged, dismissed, retrenched or whose services have been terminated; and an individual workman who has any other grievance. While the former can raise an industrial dispute, even if his case is not espoused by the union or a large number of workmen, the latter cannot do so unless his case is so espoused.

30. It was argued by Mr. Vishwanath Rai that there is also discrimination between an employer who discharges, dismisses, retrenches or terminates the services of an individual workman, and an employer whose workman has some other grievance. While other former employer has to face conciliation proceedings or adjudication by the Labour Court in respect of the dispute arising out of such discharge, dismissal, retrenchment or termination, even if the case of such workman is not espoused by the union of a large number of workmen, the latter employer will not be put to the necessity of facing conciliation proceedings or adjudication by the labour court in respect of the grievance of such workman unless the case of such workman is so espoused.

31. It is true that S. 2A treats differently a workman who is discharged, dismissed, retrenched or whose services are terminated and a workman who has some other grievance regarding his employment or conditions of employment. Consequently, an employer who discharges his workman, is treated differently from an employer whose workman has a grievance in regard to his (the workman's) employment or conditions thereof. The real question is whether such differential treatment of individual workman or employers amounts to impermissible discrimination offending art. 14.

32. As pointed out by Mahajan, C.J. in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, , Art. 14 of the Constitution does not assure that the every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position; the State can, by classification, determine who should be regarded as a class for purposes of legislation and in relation to a law enacted in respect of a particular subject; but such classification must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and should not be made arbitrarily and without any substantial basis.

33. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , the Supreme Court reiterated that Art. 14 does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question.

34. It does not admit of any doubt that in the present case the first of the above conditions is satisfied. There is an intelligible differentia which distinguishes an individual workman who is discharged, dismissed, retrenched or whose services have been terminated, and an individual workman who has some other grievance in regard to his employment or conditions thereof Likewise there is an intelligible differentia between an employer who discharges, dismisses, retrenches or terminates the services of an individual workman and an employer whose workman has some other grievance regarding his employment or conditions thereof. The more important question is whether such differentia has a rational relation to the object sought to be achieved by the statute, namely, the Industrial Disputes Act.

35. Mr. Viswanath Rai contended that such classification of individual workmen or employers, has no rational relation to the object sought to be achieved by the Act. It was argued by Mr. Viswanath Rai that there is no reason why departure should be made from the concept of collective bargaining, in the case of an individual workman who is discharged, dismissed, retrenched or whose services are terminated, while such departure is not made in the case of a workman who has some other grievance regarding his employment or conditions thereof.

36. Discharge, dismissal, retrenchment or termination of services of a workman, is of much graver consequence to a workman than any other grievance in regard to wages, bonus, allowances, working hours, work load, holidays or other conditions of employment.

37. A workman who is discharged, dismissed, retrenched or whose services are terminated, is very often likely to be forgotten by his erstwhile fellow workmen and the chances of his case being sponsored by the union of workmen, are substantially less than those in the case of a workman who has some other grievance and continues in employment. Thus a workman who is discharged, dismissed, retrenched or whose services are terminated, is at a greater disadvantage for enlisting the support of his fellow workmen to raise a collective dispute.

38. It is open to the Legislature to recognise different degrees of harm and to provide for different remedies in respect of them. The Legislature may provide for remedy for a harm or an evil of bigger magnitude, and may not provide for a remedy for a harm or an evil of a smaller magnitude. By so doing the legislature does not violate Art. 14.

39. So long as discharge, dismissal, retrenchment, or termination of services, is of greater degree of consequence to an individual workman than any other grievance in regard to his employment or conditions thereof, it is open to the Legislature to provide for a special remedy in regard to a workman who is discharged, dismissed retrenched or whose services are terminated, while such remedy may not be provided for a workman whose grievance is of lesser gravity.

40. Looked at, whether from the point of view of an individual workman or from

the point of view of an employer we think the distinction made by S. 2-A between the grievance arising out of discharge, dismissal, retrenchment or termination of services and other grievances of an individual workman is based on a classification which was reasonable relationship to the object of the Act.

41. In support of his contention that S. 2-A is not based on reasonable classification, Mr. Viswanath Rai relied on a number of decisions. In particular he referred to the decisions of the Supreme Court in *Suraj Mall Mohta and Co. v. Viswanatha Shastry* (supra) and *Minakshi Mills Ltd. v. Viswanatha Shastry A.I. R. (1953) S.C. 13*, wherein the Supreme Court held that there was no valid classification between tax evaders dealt with under the drastic provisions of the Taxation on Income (Investigation Commission) Act, 1947, and the same class of persons who fall within the ambit of S. 34 of the Indian Income Tax Act.

42. Mr. Viswanath Rai next referred to *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, wherein the Supreme Court held that there was no valid ground on which employees in Railways alone could be said to constitute a class for themselves, to justify a rule which empowered the Railway Authorities to retire, at their option, Railway employees who had completed 10 years of service, while in other branches of civil services the Central Government can retire, at its option, an official who has attained the age of 50 years or completed 25 years of service.

43. Reliance was also placed on the decision in *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, in which exclusion of Government servants belonging to a certain hill tribe from the benefit of exemption from Income Tax granted to people of that tribe, was assailed. The Supreme Court held that such classification of Government servants into a separate category, was not a reasonable classification.

44. The question whether the classification in a given case is reasonable, must depend upon the facts and circumstances of that particular case. The test of reasonableness of the classification, has to be applied to each individual case and no abstract standard of reasonableness of classification can be laid down. Hence, decisions holding that classification made in certain cases are valid or invalid, though useful, cannot provide an answer to the question whether the impugned classification in a given case is valid or invalid.

45. We cannot accede to the contention of Mr. Viswanath Rai that S. 2-A is discriminatory and violative of Art. 14 of the Constitution.

46. It was contended by Mr. Viswanath Rai that S. 2-A is only prospective and not retrospective in operation, that as discharge, dismissal, retrenchment or termination of services of individual workmen in these three petitions, had taken place prior to S. 2-A coming into force, i.e., December 1, 1965, S. 2-A has no application to their cases and hence such discharge, dismissal, retrenchment or termination of their services, did not give rise to industrial disputes.

47. On the other hand, the learned Government Advocate contended that S. 2-A of the Act is applicable also to disputes arising out of discharge, dismissal, retrenchment or termination of services of individual workmen which took place prior to December 1, 1965.

48. As the question whether S. 2-A is applicable where discharge, dismissal, retrenchment or termination of services of an individual workman, took place prior to December 1, 1965 has arisen in a few other writ petitions which are pending before this Court and as any decision rendered by us in the present petitions, will be binding in those other cases also. We permitted learned counsel appearing in those other cases, who desired to intervenes, to do so and to address arguments on this question. Accordingly Mr. U. L. Narayana Rao addressed arguments supporting the contention of Mr. Viswanath Rai while Mr. S. Krishnaiah and Mr. M. C. Narasimhan addressed arguments supporting the contention of the learned Government Advocate.

49. Before dealing with the rival contentions of learned counsel on this question, we may state a few well accepted rules of interpretation of statutes bearing on the point of retrospective operation of statutory provisions :

(i) No statute is to be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication;

(ii) A retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Every statute which takes away or impairs vested rights acquired under the existing laws or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past must be presumed to be intended not to have retrospective operation;

(iii) If the language of the statute is plainly retrospective it must be so interpreted. When the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed even though the consequences may appear unjust and hard;

(iv) A statute is not to be construed to have a greater retrospective operation than its language renders necessary. The retrospective effect of a statute may be partial in its operation;

(v) If a statute in its nature a declaratory Act it is retrospective even if it takes away previous rights;

(vi) A statute is not necessarily retrospective because a part of the requisites for its action is drawn from a time antecedent to its passing.

50. Mr. Viswanath Rai advanced the following reasons for holding that S. 2A does not apply to discharge, dismissal, retrenchment and termination of services,

which had taken place prior to December 1, 1965;

(i) The adverbial clause, "where an employer discharges, dismisses, retrenches or otherwise terminates" uses present tense. The intention of the Legislature is that the provisions of the section (S. 2A) should apply to discharge, dismissal, retrenchment or termination of services, that takes place after the coming into force of this section and not to any of those which had taken place prior to the section coming into force. If the Legislature intended that the section should apply to discharge, dismissal, retrenchment, or termination of services that had taken place prior to the section coming into force, the Legislature would have employed past perfect tense and not present tense i.e., the Legislature would have said "where an employer has discharged, dismissed, retrenched, or otherwise terminated the services of an individual workman" The use of the present tense in the section clearly indicates that the Legislature intended that such section should apply to discharges, dismissal, etc. that take place after the section coming into force;

(ii) If the section is construed as applying to discharge, dismissal, retrenchment or termination of services that had taken place prior to the section coming into force, then, all previous discharge, dismissal, retrenchment and termination of services, would become industrial disputes and individual workmen who have been discharged or dismissed, retrenched or whose services were terminated in the past, can claim that disputes relating to their discharge, dismissal, retrenchment or termination should be referred for adjudication. The consequences of such disputes being re-opened after the lapse of many years, and referred for adjudication, would be disastrous to employers. Hence, it could not have been the intention of the Legislature that such discharge, dismissal, retrenchment or termination of services, which had already taken place at a time when the employers were under no statutory liability to be subjected to adjudication under the Act, should now be subjected a new liability in respect of such discharge, dismissal, retrenchment or termination of services which had already happened.

(III) Section 2A is not a mere procedural matter but creates new rights in favour of individual workmen and imposes new liabilities and obligations on employers, because under the ordinary law of master and servant, an employee who is discharged, dismissed, etc., can only claim damages for wrongful dismissal or discharge and cannot claim reinstatement; whereas under industrial adjudication, the Labour Court or the Tribunal can not only award damages but also order reinstatement of workmen together with back wages. A provision which imposes such serious liabilities and obligations on employers, cannot be construed as having retrospective effect when there are neither express words nor necessary intendment to that effect in the section.

51. In support of his contention, Mr. Viswanath Rai relied on the decision of the Punjab and Haryana High Court in *Sri Gopal Paper Mills Ltd. v. The State of Haryana* (1968) II Lab & I. C. 1259, Tekchand, J. said at page 1267, that S. 2A

creates a substantive right and cannot be retrospective in operation and that if that were not so, then all the previous dismissal would become industrial disputes and that it could not be the intention of the Legislature that all dismissed personnel in the past could now claim reference on the ground that such dismissal is an industrial dispute.

52. Mr. Viswanath Rai referred to the decision in *Carson v. Carson Stoyek* (1964) I.W.L.R. 511. There, in November, 1961, the husband took back into the matrimonial home his wife who had confessed to him her adultery in 1960. The wife left the matrimonial home in August 1962. The husband filed a petition praying for divorce on the ground of the wife's adultery in 1960. Section 3 of the Matrimonial Causes Act, 1963 provides that an adultery which had been condoned, shall not be capable of being revived. The question that arose in that case, was whether that section had retrospective effect.

53. Scarman, J. said that the husband had an accrued right to divorce the wife upon the ground of adultery which he had condoned but which was then revived and that there was nothing in the language of section 3 of the Matrimonial Causes Act, 1963 (which came a year later) which compels holding that Parliament, by that section, intended to interfere with the accrued right.

54. Mr. U. L. Narayana Rao, learned counsel who intervened, referred to the following observations in *Craies on Statute Law* which were quoted with approval by the Supreme Court in *The Central Bank of India v. Their Workmen* (1959) 17 F.J.R. 57 at page 82 :

"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".

The Supreme Court added :

"A remedial Act, on the contrary, is not necessarily retrospective; it may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective effect by express terms or necessary intendment".

55. Mr. Narayana Rao contended that the Industrial Disputes (Amendment) Act, 1965, by which S. 2A was inserted, is a remedial Act and not a declaratory Act, that the former, unlike the latter, is not necessarily retrospective, and that there is nothing in the language of S. 2-A which makes it retrospective so as to render discharge, dismissal, retrenchment or termination of services of an individual workman before December 1, 1965 an industrial dispute.

56. On the other hand, the learned Government Advocate contended that S. 2A applied to dismissal, discharge, or retrenchment or termination, of services,

which has taken place prior to December 1, 1965, and that such a construction of S. 2-A does not amount to any retrospective operation of that section. The learned Government Advocate relied on the rule that a statute cannot be said to be retrospective because a part of the requisites for its action, is drawn from a time antecedent to its passing. The learned Government Advocate argued that S. 2-A confers prospective benefit only and that even if such benefit is on the basis of antecedent facts, namely, discharge, dismissal, retrenchment or termination of services of individual workmen which took place prior to December 1, 1965, such application of S. 2-A cannot be regarded as retrospective.

57. The learned Government Advocate referred to several cases in which statutory provisions were held to be applicable on the basis of facts, or events which had taken place prior to the coming into force of such statutory provisions.

58. In *re Solicitor's Clerk* (1957) 3 All E.R. 617, a solicitor's clerk was convicted of larceny in 1953. Under S. 16(1) of the Solicitors Act, 1941 as amended by S. 11 of the Solicitor's (Amendment) Act, 1956, the Disciplinary Committee made an order disqualifying him from acting as solicitor's clerk. It was contended that the offence for which he was convicted was committed, before S. 11 of the Solicitors (Amendment) Act, 1956, came into force and that the Disciplinary Committee had no jurisdiction to make an order which was retrospective in its effect. Repelling that contention, Lord Goddard, C.J., held that S. 11 was not retrospective but enabled an order to be made disqualifying a person from acting as a solicitor's clerk in future and that what happened in the past was the cause or the reason for making that order.

59. In *Rex v. Vine* (1875) 10 Q.B. 195, the words "every person convicted of felony shall for ever be disqualified from selling spirits by retail and if any persons shall, after having been so convicted, take out or have any licence to sell spirits by retail, the same shall be void to all intents and purposes", were applied to a person who had been convicted of felony before the Act was passed though, by doing so, vested rights were affected, Mellor, J. observed at pages 200-201 :-

"It appears to me to be the general object of this statute that there should be restraint as to the person who should be qualified to have licences, not as a punishment, but for the public good, upon the ground of character, A man convicted before the Act passed is quite as much tainted as a man convicted after; and it appears to me not only the possible but the natural interpretation of the section that any one convicted of felony shall be ipso facto disqualified, and the licences, if granted, valid".

60. In *Sajjan Singh Vs. The State of Punjab*, , the appellant was convicted of an offence under S. 161/165 of the Indian Penal Code read with S. 5(2) of the Prevention of Corruption Act, 1947. Sub-section (3) of S. 5 of the Prevention of Corruption Act, 1947 reads :-

"In any trial of an offence punishable under sub-s. (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused

person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption".

61. It was contended that when the section speaks of an accused being in possession of pecuniary resources or property disproportionate to his known sources of income, it meant only pecuniary resources or property acquired after the date of the said Act coming into force and that otherwise it would be to give the Act retrospective operation. Rejecting that contention, this is what Das Gupta., J., who spoke for the Court, said at page 468 :

"We agree with the learned counsel that the Act has no retrospective operation. We are unable to agree how-ever that to take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf which are acquired before the date of the Act, is in any way giving the Act a retrospective operation".

62. The main justification for that conclusion has been explained by his Lordship thus :

"Looking at the words of the section and giving them their plain and natural meaning, we find it impossible to say that pecuniary resources and property acquired before the date on which the Prevention of Corruption Act came into force, should not be taken into account even if in possession of the accused or any other person on his behalf. To accept the contention that such pecuniary resources or property should not be taken into consideration, one has to read into the section the additional words "if acquired after the date of this Act" after the word "property". For this there is no justification".

63. In Syed Bashiruddin Ashraf Vs. Bihar Subai Sunni Majlis-e-awqaf and Others, , S. 27 of the Bihar Waqfs Act, 1947, as amended by the Bihar Waqfs (Amendment) Act, 1951, empowered the Majlis to remove a Mutawalli from his office if such Mutawalli refused to act or wilfully disobeyed the orders and directions of the Majlis under the Act. There, it was contended that this amendment was not retrospective in operation and that the Majlis could exercise this power only in respect of orders and directions of the Majlis given after the date on which the amending Act came into force and not in respect of orders and directions issued previously. Repelling that contention, this is what Hidayatullah, J., (as he then was), who spoke for the Court, said at page 1209 :

"The amendment, no doubt, conferred jurisdiction upon the Majlis to act prospectively from the date of the amendment but the power under the amendment could be exercised in respect of orders and directions issued by the Majlis and disobeyed by Mutawalli before the amendment came into force A statute is not necessarily used retrospectively when the power conferred by it is

based on conduct anterior or its enactment, if it is clearly intended that the said power must reach back to that conduct. It would be another matter if there was a vested right which was taken away, but there could be no vested right to continue as Mutawalli after mismanagement and misconduct of many sorts were established".

64. His Lordship explained that no vested right of Mutawalli was taken away because there could be no vested right to continue as Mutawalli after mismanagement and misconduct were proved. His Lordship added that it would be another matter if there was a vested right which was taken away.

65. The learned Government Advocate argued that the mere use of the present tense in S. 2A, when it says : "Where an employer discharges, dismisses, retrenches or otherwise terminates services of an individual workman", does not necessarily lead to an inference that the section refers only to discharge, dismissal, retrenchment or termination which takes place after the section comes into operation. In support of his contention, the learned Government Advocate relied on the decision in Kapur Chand Jain Vs. B.S. Grewal and Others, . There, the landlord made an application under S. 14-A(1) of the Punjab Security of Land Tenures Act, 1953 before the authority specified therein, for eviction of his tenant on the ground that he (the tenant) had failed to pay rent regularly without sufficient cause. The appellat authority under that Act directed the tenant to be evicted.

66. Section 9(1) of that Act reads :

"9. (1) Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant -

(i) ...

(ii) ... fails to pay rent regularly without sufficient cause; or" (under-lining is ours)

It was contended by the learned counsel for the tenant that S. 9(1)(ii) applied prospectively and that the conduct of the tenant prior to the enactment of S. 14-A could not be taken into account. Repelling that contention Hidayatullah J., (as he then was), who spoke for the Court, said at page 1493 :

"In our opinion the conduct of the tenant prior to the coming into force of the new section can be taken into account ... The clause in question makes a particular conduct the ground for an application for eviction. The necessary condition for the application of S. 9(1)(ii) may commence even before the Act came into force and past conduct, which is as relevant for the clause as conduct after the coming into force of the Act, cannot be overlooked".

67. Reliance was also placed on the observations of a Bench of Jammu and Kashmir High Court in Sheik Ghulam v. State of Jammu and Kashmir AIR (1965)

J&K 78, to the effect that a statute is to be regarded as always speaking and that the use of the present tense in a section, must, in appropriate circumstances, be deemed to include past tense or past participle.

68. Mr. Sathyamurthy, learned counsel for an individual workman impleaded as a respondent in one of these petitions, placed strong reliance on the decision of a Bench of the Delhi High Court in *National Productivity Council v. S. N. Kaul* (1969) 37 F.J.R. 237, in which it was held that the case of a workman dismissed before coming into force of S. 2-A could be validly referred for adjudication under S. 10 of the Act. Kapur, J., said in his leading judgment, that the emphasis in the section, is not on the date of dismissal or discharge but on any dispute or difference between an individual workman and his employer, connected with or arising out of discharge or dismissal. His Lordship added that S. 2-A takes note of every dispute arising out of or connected with termination etc., and confers on such dispute the status of industrial dispute and that in the nature of things the date of termination cannot be treated as crucial.

69. Deshpande, J., in his separate but concurring judgment, referred to the decision in *Rex v. St. Mary Whitechapel (Inhabitants)* (1948) 12 Q.B. 120 in which the relevant statutory provision read :

"No woman residing in any parish with her husband at the time of his death shall be removed from such parish within twelve months next after his death if she so long continues a widow."

70. While construing that provision, Lord Denman observed :

"It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption against retrospective statute being intended supported this construction, but we have before shown that the statute is in its direct operation prospective, as it relates to future removals only and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing."

71. Deshpande, J., said that the above observations are sufficient to show that the use of present tense or past tense is not decisive and that the language has to be considered in conjunction with other factors. His Lordship added that it cannot be stated as invariable rule that the use of the present tense or of the past or of the present perfect tense alone, is sufficient to show whether the statute applies only to the future events or to the past events also.

72. While we agree with respect with his Lordship that the use of the present tense alone is not sufficient to infer that the statute does not apply to past events also, it cannot be denied that the use of the present tense is one of the relevant factors in ascertaining whether the Legislature intended that the statute should apply to past events, conduct or facts also.

73. From the observations of Hidayatullah J., (as he then was) in *Bashiruddin v.*

B. S. S. Majlis, (supra)

"A statute is not necessarily retrospective when the power conferred by it is based on conduct anterior to its enactment ... it would be another matter if there was a vested right which was taken away,"

it follows that it is not an invariable rule that a statute does not operate retrospectively when the power conferred on it is based on facts, events or conduct anterior to its enactment.

74. Mr. M. C. Narasimhan, learned counsel who intervened, argued that S. 2-A deals with merely a procedural matter and not with any substantive rights of parties. According to him, S. 2-A which states that certain individual disputes shall be deemed to be industrial disputes, merely provides for adjudication of such disputes by the Industrial Tribunal or the Labour Court instead of such disputes being adjudicated by ordinary civil courts.

75. This argument of Mr. Narasimhan overlooks the important distinction between the adjudication by an ordinary Civil Court and adjudication by the Industrial Tribunal or the Labour Court. We think Mr. Viswanath Rai is right in contending that an Industrial Tribunal or Labour Court not merely adjudicates existing rights and liabilities but can also create new rights and liabilities and enforce them. While under the ordinary law, a workman discharged, dismissed, or retrenched, can only get compensation for wrongful dismissal, an Industrial or Labour Court can order reinstatement of such workman together with back wages. Thus, we are unable to agree with M. Narasimhan that S. 2-A merely deals with a procedural matter and hence has retrospective effect.

76. Mr. Narasimhan next submitted that the relevant point of time for determining whether a dispute is or is not an industrial dispute, is when the Government refers that dispute under S. 10 of the Act to the Labour Court or the Industrial Tribunal, and that if at the time of making such reference, S. 2-A is in force, there is no retrospective application of S. 2-A even if such dispute relates to dismissal, discharge, retrenchment or termination of services which took place prior to it coming into force.

77. It is true that a dispute should be an industrial dispute at the time of referring that dispute for adjudication under S. 10 of the Act; but if a dispute relating to discharge, dismissal, retrenchment or termination of services, was not an industrial dispute at the time such discharge, dismissal, retrenchment or termination took place, to treat it subsequently, i.e., at the time of making the reference, as an industrial dispute, by the application of S. 2-A would, as seen earlier, amount to retrospective application of that section.

78. We think the real question is whether the Legislature has manifested an intention that S. 2-A should apply to past transactions and affect vested rights. The learned Government Advocate submitted that it is reasonable to hold that the Legislature has manifested such intention. He sought to derive support from

the decision in *Barber v. Pigden* (1937) 1 All E.R. 115. There, the question that arose was whether S. 3 of the Law Reforms (Married Women and Tortfeasors) Act, 1935 was applicable to a tort committed before passing of that Act.

78. Section 3 of that Act provides :

"Subject to the provisions of this part of this Act, the husband of a married woman shall not, by reason only of his being her husband, be liable to (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation".

79. By S. 4 of that Act, it is provided that nothing in Part I of the Act, should affect any legal proceedings in respect of any tort if the proceeding had been instituted in respect thereof before the passing of that Act.

80. Greer, L.J. said that notwithstanding the strong presumption against construing statutes as retrospective by reason of the words in S. 3(b) and S. 4(1) (b), it must be inferred that a retrospective effect was clearly intended.

81. Scott, L.J. said that the language of Part I discloses an intention to make a clean sweep of the old legal fiction of the common law that a woman on marrying became merged in the personality of her husband and ceased to be a fully qualified and separate human person. His Lordship added that a statute abolishing old legal fictions, is so nearly akin to a procedural statute that the canon against retrospective interpretation, can have little, if any, application.

82. Thus, the decision in *Barber v. Pigden* (1937) 1 All E. R. 115, depended upon the language of the provisions of that particular statute and the circumstance that the Act abolished a legal fiction; We do not see what assistance the learned Government Advocate can derive from that decision.

83. On the other hand, in its very recent decision, *Ranjit Chandra Chodhury v. Mohitosh Mukherjee* (1969) II S.C.J. 661, the Supreme Court has reiterated that it is a well accepted canon of interpretation of statutes that a substantive right cannot be taken away retrospectively unless the law expressly states so or there is a clear intendment. There, the question that arose was whether in a suit for eviction filed when the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was in force, the provisions of S. 24 of the West Bengal Premises Tenancy Act, 1956 which repealed the former Act, would be applicable. Section 24 of the latter Act reads :-

"24. When there is no proceeding pending in Court for the recovery of possession of the premises, the acceptance of rent in respect of the period of default in payment of rent by the landlord from the tenant shall operate as a waiver of such default".

84. The tenant relied upon the above section and contended that acceptance of

rent by the landlord operated as waiver of default. Hidayatullah C.J, who spoke for the court, held that the section creates a change in the substantive rights and therefore must be held to be prospective in operation and not retrospective.

85. The learned Government Advocate next contended that no serious inconvenience will result to employers by construing S. 2-A as having retrospective effect, because it is in the discretion of the Government to make or not to make a reference under S. 10 of the Act and that the Government is not likely to refer for adjudication a dispute relating to discharge, dismissal or retrenchment or termination of services of an individual employee, if it took place long before S. 2-A came into force.

86. The above contention cannot be accepted for two reasons. Firstly, the question whether a statutory provision has or has no retrospective operation, does not depend upon what the Government is or is not likely to do in its discretion. Secondly, even if the Government refers under S. 10, only those disputes which relates to discharge, dismissal, retrenchment, or termination of services of individual workman which took place not too long before December 1, 1965, the rights which vested in the employers during the period prior to December 1, 1965, however short that period may be, will be affected.

87. The principle as to when a statutory provision imposing new obligations on employers in relation to their workmen, should be construed as retrospective or not retrospective in operation, has been well set out, if we may say so with respect, by the Judicial Committee of the Privy Council in *Sunshine Porcelain Potteries v. Nash* (1961) 3 All E.R. 203. u/s 18 of the Workmen's Compensations Act, 1928, compensation was payable in respect of scheduled industrial diseases which did not include silicosis. But the amendment Act of 1946, it was provided, inter alia, that where a medical practitioner certifies that a worker is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed, the worker shall be entitled to compensation under the principal Act as if the disease was a personal injury by accident arising out of and in the course of that employment.

88. A worker was disabled by silicosis after that amending Act came into force. It was contended by her employer that the Amending Act had no retrospective effect. Lord Reid, who delivered the judgment of the Judicial Committee, stated the principle thus at page 206 :

"Generally there is a strong presumption that a legislature does not intend to impose a new liability in respect of something that has already happened, because generally it would not be reasonable for a legislature to do that. So, if a worker has already sustained injury or contracted disease at a time when the employer is under no statutory liability to him arising out of that injury or disease, there would in general be a presumption that an Act bringing that injury or disease within the scope of compensation would not apply to that case; otherwise there would be liability on the employer arising out of a state of things

which existed before the Act was passed. But this presumption may be overcome not only by express words in the Act but also by circumstances sufficiently strong to displace it."

89. But, in the particular circumstances of that case, his Lordship held that Amending Act must be construed as having retrospective effect because notoriously silicosis is a disease of slow onset and it cannot be supposed that the Legislature intended that every worker disabled after 1946, must prove that the disease was contracted or that the damage was done to him after 1946, which would involve there being a long period of many years of uncertainty.

90. But in regard to S. 2-A of the Act, no compelling reason has been pointed out to construe that section as having retrospective effect. With great respect to Kapur and Deshpande, JJ., we think that S. 2-A has no application to discharge, dismissal, retrenchment or termination of services of; an individual workman which took place prior to S. 2A coming into force.

91. As the dismissal or discharge of the individual workmen in each of these three petitions had taken place prior to December 1, 1965 the Commissioner of Labour was in error in not disposing of the appeals before him under S. 39 of the Shops and Establishments Act and in issuing a circular advising workmen who had preferred such appeals to consider the desirability of withdrawing such appeals and approaching the conciliation officers for taking up the matter under the provisions of the Act. The conciliation proceedings initiated by the Conciliation Office under S. 12 of the Act in respect of such discharge or dismissal of individual workmen are without jurisdiction and hence the conciliation officer should be prohibited from proceeding with them.

92. Mr. Viswanath Rai stated that he had no objection to our issuing a direction to the Commissioner of Labour to dispose of the appeals under S. 39 of the Shops and Establishments Act, in spite of workmen having made applications for withdrawing those appeals. Accordingly, we issue such a direction to the Commissioner.

93. In the result, we reject the prayer for declaring S. 2-A of the Act as invalid. But we issue a writ of prohibition restraining the Conciliation Officer from proceeding under S. 12 of the Act in respect of the disputes relating to such discharge or dismissal of those individual workmen. We also give a direction to the Commissioner to dispose of the appeals under S. 39 of the Shops and Establishments Act, before him, according to law.

94. In the circumstances of these petitions, we direct the parties to bear their own costs.