

(1958) 03 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1046 of 1956

Padarth Ratnam and Company

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 19-03-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2

Citation : (1958) 2 LLJ 290

Final Decision : Allowed

Judgement

1. This is an application for the issue of a writ of certiorari to quash the order of the Industrial Tribunal, Guntur, in Industrial Dispute No. 6 of 1956. The facts which have given rise to this writ petition may be briefly stated. The petitioner is a private company incorporated under the provisions of the Indian Companies Act and has been carrying on tobacco business for a number of years at Guntur, under the name and style of Padarth Ratnam & Co. On 4 May 1956, the Government of Andhra made the following notification :-

"Whereas an industrial dispute has arisen between the workers and the management of the Padarth Ratnam & Co., Guntur, in respect of matter mentioned in the annexure to this order :

And whereas in the opinion of the Governor of Andhra it is necessary to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by S. 10(1)(c) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Andhra hereby directs that the said dispute be referred for adjudication to the industrial tribunal, having its place of sitting at Visakhapatnam.

ANNEXURE

Dismissal of the following four women workers by the management of the Padarth Ratnam and Co., Guntur."

2. They followed the names of the dismissed workers.

3. Before the industrial tribunal, respondents 2 to 4, who are the dismissed workers, filed their statement of claim. Their case was that there were never any complaints either against their conduct or work but that on a woman worker carrying some tales against them with a view to secure the head maistry's job, they were summarily and suddenly dismissed on 11 April 1955 without notice and without assigning any reasons.

4. In its rejoinder, the petitioner-company denied the claim of respondents 2 to 4 and contended that the respondents were guilty of indiscipline, insubordination and misconduct and that their dismissal was proper and valid. The company also raised a ground that the tribunal had no jurisdiction to enquire into the matter by reason of the fact that there was no industrial dispute within the meaning of S. 2(k) of the Industrial Disputes Act, the existence of which alone would confer jurisdiction on the tribunal to make an adjudication under the Act. On the contention of the parties, the tribunal raised the following issues for determination :-

(1) Whether the petitioners were guilty of indiscipline, insubordination and misconduct as alleged by the management and their dismissal was proper and valid ?

(2) Whether in any case the management was entitled to terminate their services without notice and without assigning any reason ?

(3) Whether this jurisdiction has no jurisdiction to enquire into the matter ?

(4) To what relief are petitioners entitled ?

5. On the first and the second of the issues, the tribunal reached the conclusion that the dismissal of the respondents was wrongful and invalid. It held that the respondents were entitled to reinstatement but by reason of the fact that they had secured employment meanwhile, the tribunal directed the petitioner-company to pay certain specified amounts to the respondents as compensation.

6. In this writ petition it is not necessary to canvass the correctness of these findings and indeed, the learned counsel for the petitioner has not attempted to do so. The only ground on which the petitioner-company seeks to have award of the tribunal set aside is that it has no jurisdiction to enquire into the matter by reason of the fact that there is no "industrial dispute" within the meaning of the Act. This ground of objection to the tribunal's jurisdiction to entertain the dispute was elaborately argued before the tribunal and it found that it had jurisdiction to entertain the dispute.

7. In order to appreciate the contention with regard to the question of jurisdiction it is necessary to recapitulate the facts as found by the tribunal. Respondents 2 to 4 were not admittedly members of any union before the date of their dismissal. It is common ground that it was immediately after their

dismissal that they and other workers who were similarly dismissed by the petitioner-company reported the matter to the Guntur Town Tobacco Workers" Union authorities and forthwith joined that union. Thereupon the assistant secretary of the Andhra Provincial Tobacco Workers" Federation, Guntur, and the assistant secretary of the British India Tobacco Company Workers" Union took up the matter and filed a complaint before the labour officer who on receipt of the complaint initiated conciliation proceedings. It is also an admitted fact that there was no separate union representing the workers of the petitioner-company though there was a union for all tobacco workers in Guntur town. That union is affiliated to a provincial body called the Andhra Provincial Tobacco Workers" Federation. Accepting these findings of fact recorded by the tribunal as correct, Mr. K. Srinivasamurti, learned counsel for the petitioner, has argued, by a reference to the material provisions of the Industrial Disputes Act, that what the tribunal was dealing with was an individual dispute and not an industrial dispute and that therefore the tribunal had, no jurisdiction to adjudicate upon the dispute. In particular, learned counsel for the petitioner-company has pointed out that respondents 2 to 4, at the time of their dismissal by the petitioner-company, were not members of any union of workers and that their subsequent admission as members of the union which ultimately espoused their cause, would not confer jurisdiction on the tribunal.

8. In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is in the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an "industrial dispute" at all and therefore the jurisdiction of the industrial tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge. This was the view taken by their lordships of the Supreme Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, If so much is conceded, it is of course open to the petitioner-company to challenge the validity of the award made by the industrial tribunal on the ground that what was referred to it was not an "industrial dispute" within the meaning of the Act.

9. Now, the expression "industrial dispute" is defined in S. 2(k) as follows :

""industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person." In an earlier decision of the Madras High Court in *Kandan Textiles, Ltd. v. Industrial Tribunal, Madras* [1949 L.L.J. 875], Rajamannar, C.J., and Mack, J., observed as follows :

"Where the authority of the particular union of workers (which made the complaint to the Government) to represent any workers is not proved, there is no dispute between the employer and the workers and a reference by the Government on the basis of such a complaint would be bad."

10. The observation made by Rajamannar, C.J., are as follows :-

"I must, however, suggest that the intention of the legislature may be expressed in a more clear and unambiguous language than it is at present; to decide whether an individual dispute between an employee or employees on the one side and the employer on the other side is an industrial dispute which could be referred to a tribunal for determination even when a substantial section of the entire establishment or a recognized part of the establishment does not take up his or their cause."

11. In *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, their lordships of the Supreme Court after an elaborate consideration of the provisions of the Uttar Pradesh Industrial Dispute Act (the definition of "industrial dispute" in that Act is in pari materia with the definition contained in the Central Act) adopted the meaning of the expression "industrial dispute" given in the earlier decision in *D. N. Banerji v. P. R. Mukherjee* 1953 II L.L.J. 195 which runs :

"It conveys 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 ... But at the same time, having regard to the modern conditions of society where capital and labour have organized 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 a concerted demand by the employees for redress." Their lordships of the Supreme Court held that this view was in consonance with the idea underlying modern industrial legislation. They further observed :

"The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. 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."

12. In the light of the principles enunciated by the Supreme Court, it is necessary to consider whether there is an "industrial dispute" on the facts found by the tribunal.

13. As has already been indicated, the employees of the petitioner-company have not so far organized themselves into a recognized union. Respondents 2 to 4 were admittedly not members of a trade union on the date when their employment was terminated. There was no concerted demand by the employees of the petitioner-company for redressal of the grievances of respondents 2 to 4

After their services were terminated, the respondents joined a labour union, the office-bearers of which thereafter sought to espouse their cause. From a consideration of the facts it is manifest that the dismissed workers joined the union only for the purpose of raising a dispute with their employers, and it was only after they were admitted as members of the union that its office-bearers began to interest themselves in the redressal of the grievances of the respondents. It is no doubt true that a dispute simpliciter between an employer and a workman might develop into an industrial dispute within the meaning of S. 2(k) of the Act if the cause is espoused by a union of which he is a member. On a consideration of the relevant provisions of the Act and the decided cases, I am led to conclude that the membership of the union, which would give it jurisdiction to espouse their cause, must be one anterior to the date of the dismissal and not subsequent to it. The primary requirement, as I see it, must be that on the date on which some disciplinary action is taken against the aggrieved workmen, their cause must be espoused either by a union of which they are members or by a substantial section of the entire establishment where the dismissed workmen were formerly employed. It may be that a recognized part of the establishment also can take up their cause. But so long as a substantial section of the entire establishment or a recognized part of the establishment does not take up their cause, there can be no industrial dispute, the existence of which is a prerequisite for the assumption of jurisdiction by the tribunal. On the facts found by the tribunal in the instant case, I have no hesitation in holding that there was no industrial dispute within the meaning of S. 2(k) of the Act. The tribunal has itself observed in its award that it is not a mere case of dismissal of a few workers by a management for misconduct and that no general principle would prima facie be involved if a particular worker is dismissed for misconduct, in which case it would be purely an individual dispute. But the tribunal proceeded to observe that the management had raised an issue that all their workers were temporary workers who could be dismissed and sent away at any time they liked without notice and that therefore the question assumed the character of general question which affected the rights of almost all the tobacco workers not only in the town of Guntur but elsewhere in the State. In the opinion of the tribunal it was this fact that conferred jurisdiction. I am unable to agree with the view taken by the tribunal. The issue between the workmen and the employer was a simple one and that was whether their dismissal for alleged misconduct was justified or not. As conceded by the tribunal, this dispute was an individual dispute and was in no sense an industrial dispute. The fact that a question of general importance was raised, would not transform the dispute which, at its inception, was an individual dispute, into an industrial dispute. For the above reasons, I hold that the dispute referred to the tribunal for adjudication was an individual dispute and not an industrial dispute, and that being so, the tribunal had no jurisdiction to adjudicate upon dispute. In this view, this writ petition must be allowed. The petitioner will have its costs from respondents 2 to 4. Advocate's fee Rs. 100.