
(1960) 03 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1924 of 1957

Pooranmal Kapoorchand

APPELLANT

Vs

Sri Kishan Maheshwari and Others

RESPONDENT

Date of Decision : 22-03-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1961 All 298 : (1961) 2 FLR 561 : (1961) 2 LLJ 195

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : D. Sanyal, for the Appellant; V.K. Burman and Shambhu Pd., for the Respondent

Final Decision : Allowed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution.

2. The petitioner is a registered firm carrying on the business of purchasing and selling sugar on a wholesale scale, and employs three or four munims.

3. According to the petitioner, opposite party No, 1 had become indebted to the petitioner, and since he had no money to pay off the debt, he requested the petitioner that he be employed as a munim in the firm. He was accordingly employed on a salary of Rs. 150/- and it was agreed that opposite party would pay off his debt at the rate of Rs. 20/- p.m. Opposite party No. 1, in May 1955 himself decided to leave the service and entered as a broker in the Upper India Sugar Exchange, Kanpur.

Thereafter, the petitioner received a notice dated 25-7-55 from opposite party no. 1 demanding his salary in lieu of leave. The petitioner by letter dated 28-7-55 denied all claims of the opposite party. Thereafter one Mr. Maqbool Ahmad Khan, General Secretary Transport and General Workers' Union, filed before the Regional Conciliation Officer, Kanpur, an application praying that a Conciliation Board be constituted for the settlement of the dispute specified in

the application.

The State Government thereafter referred the matter to Sri J. N. Srivastava, the Additional Regional Conciliation Officer, Kanpur, for adjudication. The petitioner filed a preliminary objection *inter alia*, taking the plea that the dispute was not an industrial dispute. Opposite party No. 1 filed a written statement and contended that it was an industrial dispute.

According to the petitioner, opposite party No. 1 was not a member of any recognised union, and certainly not of the Transport and General Workers' Union, opposite party No. 2; that the petitioner was not engaged in Transport business and opposite party No. 2 could not make a common cause with the petitioner. It was further contended by the petitioner that the original order of reference was bad.

4. It has been contended by learned counsel for the opposite party that the Transport and General Workers' Union was not only a Union for the transport workers, but was a Union for all kinds of workers. So far as the Annual Activities Report is concerned, it shows that this Union in 1955 was registered only for Transport. That is a publication issued by the Labour Department giving the names of the Unions and also the purpose for which they have been registered. Thus, so far as 1955 issue is concerned, unless there is evidence to the contrary that can be accepted, this Union was registered only for Transport business and for no other purpose.

Learned counsel for the opposite party has argued that even if this trade Union was registered only for Transport, yet by its own constitution, it can enroll as members workers of other industries also. That was never the intention of the Industrial Disputes Act or the Trade Unions Act to create such kind of trade unions. There may be a federation of unions of this kind, but a union which will enroll workers of different industries would be against the principles of natural justice.

5. An industrial dispute has been defined 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 unemployment or the terms of employment or with the conditions of labour, of any person;"

6. In *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, their Lordships of the Supreme Court had quoted from a judgment by Issacs, J., in *George Hudson v. Australian Timber Workers' Union* (1922 32 CLR 413 at p. 441, to the effect that:

"The very nature of "Industrial dispute" as distinct from individual dispute is to obtain new industrial conditions not merely for the specified individuals then working..... It is a battle by the claimants not for themselves alone and not against the respondent alone, but by the claimants so far as they represent

their class."

In that case before their Lordships of the Supreme Court it was a lino typist employed in the Newspapers Ltd., who had been dismissed and his cause had been taken up by the Union of Working Journalists. Their Lordships had held that the worker

"could not be termed as workmen (in the plural) nor could the U. P. Working Journalists Union be called "his workmen" nor is there any indication that the individual dispute got transformed into an industrial dispute."

There could be a dispute really between an employer and his workmen, and his workmen could be represented if the union of the same concern or a union of an allied trade takes up the cause. In the present case, it cannot be termed to be a dispute between an employer and his workmen. I had taken the same view in J.K. Cotton Manufacturers Ltd., Kanpur Vs. U.P. Government and Others, where I had held:

".....if there is a termination of services of a certain employee naturally he is aggrieved. But if his case is not taken up by any union of the workers of the company nor by any of the unions of workmen employed in similar or allied trades, then in that case, it will not be "Industrial dispute", but would be an "individual dispute", and would not be referable to an Industrial Tribunal."

7. Learned counsel for the opposite party argued that this point was not taken earlier. Actually this point was taken in ground No. 2 of the petition which runs as follows.

"2. Because an industrial dispute exists when a considerable number of employees engaged in the same branch of industry make common cause, in demanding from or refusing to their employers some change in the condition of their employment."

It cannot, therefore, be said that this ground was sprung as a surprise.

8. The U. P. Industrial Disputes Act as the preamble shows, has been enacted to provide for powers to prevent strikes Or lock-outs and for the settlement of industrial disputes and other incidental matters. There is no possibility of a strike or lock-out if a worker of an industry is dismissed and all the workers in that industry, or at least in that concern, have no grievance at all and, therefore, from the object of the Industrial Disputes Act it is also quite clear that there could never have been any intention of the Legislature to authorise trade unions of an entirely different industry to represent the workers of another industry. In the present case, as I have shown, the Transport and General Workers Union was registered for Transport while the petitioner was a commercial concern of sugar selling. There was no possibility of any strike or lock-out in the sugar industry when Sri Kishen Maheshwari who was a munim in that firm had been dismissed.

9. Under the circumstance, I think there being no industrial dispute, the State

Government had no jurisdiction to refer an individual dispute. The petition is accordingly allowed and the State Government's order No. 2050 (LC)/XVIII-LA-1029 (IKR)/1955 dated 21st September 1956, referring the dispute, and the enforcement order are quashed. I make no order as to costs.