

(1951) 11 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 230 of 1951

Punjab National Bank Limited

APPELLANT

Vs

A.N. Sen and Others

RESPONDENT

Date of Decision : 20-11-1951

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7
Industrial Disputes (Central) Rules, 1957 — Rule 3
Industrial Disputes Act, 1947 — Section 10(1), 17, 2

Citation : AIR 1952 P&H 134

Hon'ble Judges : Weston, C.J;Harnam Singh, J

Bench : Division Bench

Advocate : R.L. Anand, I.D. Dua and S.N. Anand, for the Appellant; A.S. Chari and Raj Kumar Aggarwal, for the Respondent

Judgement

Harnam Singh, J.—In Civil Writ No. 230 of 1951 the Punjab National Bank Limited, Delhi, hereinafter referred to as the Bank, applies for the issuance of a writ of "certiorari" quashing the order passed on the 12th of September 1951, by the Industrial Disputes Tribunal, Delhi, hereinafter referred to as the Tribunal.

2. Briefly summarised, the facts that have given rise to Civil Writ No. 230 of 1951 are these: on the 11th of April, 1951, the employees of the Bank went on a pen-down and stay-in-strike as a protest against the suspension from service of Shri M. L. D. Sabharwal, an employee of the Bank. On the 22nd of April 1951, the Bank published a notice in the Press calling upon the employees of the Bank who had gone on strike to resume work by 10 a.m., on the 25th of April 1951. On the last mentioned date, the Bank issued a fresh notice in the press to the effect that recruitment of new staff had started, but that "former employees who wish to rejoin may apply explaining their action in staying away." The employees who had gone on strike did not rejoin the service of the Bank with the result that the All-India Punjab National Bank Employees' Federation, hereinafter referred to as the Federation, appealed to the Prime Minister of India to intervene in the

dispute.

3. On the 9th of May, 1951, the Joint Secretary to the Government of India (Ministry of Labour) wrote "inter alia", to the Managing Director of the Bank that the Ministry of Labour in consultation with the Finance Ministry felt that the best method of settling the dispute would be for the Bank to reinstate the employees except those to whose reinstatement the Bank had positive objection and to agree to refer for adjudication to an Industrial Tribunal the cases of the employees who were not reinstated.

4. In reply to the communication of the Ministry of Labour, the secretary of the Bank wrote to the Joint Secretary to the Government of India, Labour Ministry, confirming the arrangement contained in the letter of the Labour Ministry dated the 9th of May 1951, and mentioning that a list of 150 persons with regard to whose reinstatement the Bank had positive objection was in the course of preparation and would be submitted to the Ministry of Labour shortly.

5. Between the 10th of May 1951, and the 2nd of July 1951 correspondence went on between the Bank and the Ministry of Labour with which we are not concerned in these proceedings, on the 2nd of July 1951, the Government of India constituted the Tribunal and referred to that Tribunal the industrial dispute between the Bank and its branches on the one hand and their workmen of the Federation and the U.P. Bank Employees Union, Agra, hereinafter called the Union, representing such workmen on the other hand in respect of matters specified hereunder:

(1) wrongful dismissal of the workmen mentioned in Schedule 2 of the Ministry of Labour's order dated the 2nd of July 1951, and their reinstatement; and

(2) in the event of any order for reinstatement payment of wages and allowances, etc., from the date of dismissal to the date of reinstatement.

6. On the 16th of July 1951, the Tribunal acting under Rule 17 of the Industrial Disputes (Central) Rules, 1947, hereinafter referred to as the Rules, called upon the workmen of the Bank to state their case on or before the 25th of July 1951, and give a copy of their statement of the case to the Bank and then called upon the Bank to deliver in the office of the Tribunal their written statement within 10 days of the 25th July 1951, and give a copy each of their written statement to the General Secretary of the Federation and the General Secretary of the Union.

7. Pursuant to the notice issued under Rule 17 of the Rules the Federation and the Bank stated their cases before the Tribunal and on the statement of the cases the Tribunal fixed the following issues:

(1) Was there a dismissal of the persons mentioned in Schedule II?

(2) if so, was such dismissal wrongful?

(3) Are the workmen or any of them named in Schedule II entitled to an order for reinstatement?

(4) if so, to what additional relief are they entitled?

(5) Are the persons mentioned in Items Nos. 1, 2, 5, 6, 16, 19, 25, 27, 28, 44, 48, 72, 75, 76, 77, 80, 86, 93, 94, 95, 96, 98, 99, 101, 102, 103, 107, 109, 112, 115, 117, 118, 121, 125, 126, 128, 134, 135, 146, 147 and 149, connected with the East Punjab Employees Federation and 72, 75, 76 and 77, connected with U. P. Bank Employees Association, workmen within the meaning of the Industrial Disputes Act? if not, has the Tribunal jurisdiction to entertain any dispute regarding them?

8. From the record it appears that the representatives of the parties accepted the issues fixed to be sufficient.

9. In the statement of the case for the employees the "interim" relief specified hereunder was claimed:

"150 employees concerned in the reference have been without job and without any salaries or allowances since the 17th April and having regard to the fact that the present adjudication having to deal with such a large number of cases, is likely to last for a considerable period, the Federation prays that the Tribunal may be pleased to make an "interim" award in regard to pay and allowances of the 150 employees concerned."

10. In resisting the claim for the grant of "interim" relief the Bank maintained:

"It is a question of fact to be decided on evidence produced by the parties whether the 150 persons whose cases are before the Tribunal are innocent or are guilty of unpardonable acts of violence, Intimidation coercion and victimisation. As a result of its findings the Court will either award appropriate relief or dismiss the case of the 150 persons. Pending the determination of this all important questions, these 150 person are not entitled to any relief or any "interim" award. To grant any relief at this stage will be to pre-judge the whole issue."

11. From the proceedings before the Tribunal it appears that the Bank resisted the claim for "interim" pay and allowances on the grounds specified hereunder:

(1) that Industrial Tribunals have no jurisdiction to make "interim" orders;

(2) that the Bank would not have entered into an arrangement with the Government of India, Ministry of Labour, if the Bank was not given the liberty to object to the reinstatement of the 150 employees;

(3) that an order for payment of "interim" pay and allowances would amount to a decision of the second matter referred to the Tribunal for adjudication;

(4) that the conduct of the employees has been such that no "interim" relief should be granted to them;

(5) that no "prima facie" case for the grant of "interim" relief has been made out; and

(6) that in any case "interim" pay and allowances should not be allowed except on the employees furnishing security for restitution.

12. In deciding the question of "interim" pay and allowances the Tribunal ordered:

"I, therefore, direct the Bank to pay these employees their usual salary and allowances as from the 14th of May 1951, and continue to do so month by month until further orders: The Bank shall comply with this order from the 1st of October 1951. By that date all arrears must be paid off. Thereafter, the "interim" allowance shall be paid month by month. The reasons for this decision shall be given later."

13. On the 24th September 1951, the Tribunal gave reasons for the order passed on the 12th of September 1951.

14. On the 17th of September 1951, the Bank applied in this Court under Article 226 of the Constitution for the issuance of a writ of "certio-rari" quashing the order passed by the Tribunal on the 12th of September 1951.

15. Mr. Chari, appearing for the Federation and the Union, urges a double-barrelled objection to the application under Article 226 of the Constitution, in the first place, it is said that Section 1 of the Industrial Disputes (Appellate Tribunal) Act 1950, hereinafter called Appellate Act, gives a specific and adequate legal remedy to the Bank from the order of the Tribunal passed on the 12th of September 1951, and in the second place, it is said that in Paragraph 38 of the application under Article 226 of the Constitution there is a suppression of material facts on which the rule for "certiorari" was moved. Paragraph 38 of the application reads:

"38. That the petitioner has no effective remedy other than the present petition for rectifying the wrong done to the Punjab National Bank, Limited by reason of the order of 12-9-1951."

16. Now, in case it be found that Section 7 of the Appellate Act gives a specific and adequate legal remedy to the Bank from the order of the Tribunal, the application for the writ would fail, but in case it be found that the remedy provided by Section 7 of the Appellate Act is not available to the Bank and there is no suppression of material facts in the application under Article 226 of the Constitution the Bank would be entitled to press the application for writ on merits.

17. Mr. Ram Lal Anand, appearing for the Bank, urges that the order passed by the Tribunal on the 12th of September 1951, is not appealable and that the Tribunal in any case having acted without jurisdiction and in contravention of the fundamental principles of justice, the writ of "certiorari" is the appropriate relief.

18. In arguing the case counsel for the Bank urges that the Tribunal acted without jurisdiction for the reason that the question of the grant of "interim" pay and allowances had not been referred for adjudication to the Tribunal and that the expression "interim award" occurring in Section 2 (b) of the Act means the

final determination of some of the matters referred for adjudication to the Tribunal. I do not accept the validity of the argument.

19. Now, an industrial dispute in respect of matters specified in Schedule I was referred to the Tribunal for adjudication. In Schedule I, the matters in respect of which the industrial dispute had arisen are stated to be wrongful dismissal of the workmen mentioned in Schedule II and their reinstatement and in the event of any order for reinstatement, payment of wages and allowances, etc., from the date of the dismissal to the date of reinstatement. In AIR 1949 148 (Federal Court) it was said that Section 10 of the Act does not require that the particular dispute should be mentioned in the order and it is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear in the order. In that case the Government made an order referring an industrial dispute for adjudication to the Tribunal without specifying the matters in respect of which the dispute had arisen and on these facts it was held that the order for reference was not defective. Clearly, it is not necessary to specify in the order of reference the reliefs to be given by the Tribunal in adjudicating upon the industrial dispute. Rule 1 (b) of Order VII of the CPC requires the plaintiff to state in the plaint the relief which he claims in the suit. Rule 3 of the Rules does not require the relief to be specified in the application for reference and all that is required in the order of reference is the existence of an industrial dispute between the parties to empower the Tribunal to grant suitable relief to bring about industrial peace. In *The Bharat Bank Ltd., Delhi v. Employees of Bharat Bank, Ltd., Delhi* AIR 1950 S O 188, Mukherjea, J., said:

"In settling the dispute between the employers and the workmen, the function of the Tribunal is not confined to administration of justice to accordance with law. It can confer rights and privileges on either parties which it considers reasonable and proper though they may not be within the terms of any existing agreement. It is not merely to interpret or give effect to contractual rights or obligations of the parties. It can create new rights or obligations between them which it considers essential for them for keeping industrial peace. An Industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organisation on the other and the Industrial Tribunal has to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law."

Indeed, the Tribunal can deal with all matters incidental and ancillary to the dispute referred to it for adjudication and make such orders, provisional or final, as it deems expedient for the settlement of the dispute, though it has not Jurisdiction to make an order not substantially involved in or connected with the dispute. Clearly, the jurisdiction of the Tribunal is limited to the adjudication of the industrial dispute, but nowhere to the Act is it stated as to what relief should be granted to the workmen by the Tribunal in adjudicating upon that Industrial dispute. That being so, I think that there is no force in the objection that the

Tribunal had no jurisdiction to consider the question of the grant of "interim" pay and allowances.

20. But it is said that the expression "interim award" means final determination of some items out of the Items that the Tribunal is called upon to determine. The argument raised is that as the order passed on the 12th of September 1951 does not finally determine any of the matters referred for adjudication to the Tribunal the order does not come within Section 2 (b) of the Act and the Tribunal had no jurisdiction to make that order. In "Yugal Kishore Sinha v. The State of Bihar (1950) II LL J 539 an identical contention was raised. In repelling the contention Meredith, C.J., (Shearer and Das, JJ. concurring) said :

"The Oxford Dictionary defines "interim", "inter alia", as a "temporary or provisional arrangement adopted in the meanwhile". There is no reason why this ordinary meaning should not be attached to the word in Section 2 (b), and in fact the context clearly shows that that is the meaning attached. "Award" is defined as an "interim" or final determination, not only of an industrial dispute, but also of any question relating thereto. Therefore, it is clear that in regard to even a single question, both an "interim" and a final determination are contemplated. Manifestly, the word "interim" in such a context must mean a provisional or temporary arrangement made in a matter of urgency and subject to a final adjustment or complete determination of the dispute; for example, a payment on account pending final settlement of the amount as in the present case."

With great respect I follow the opinion expressed by the Pull Bench of the Patna High Court in (1950) II L L J 539" and hold that the Tribunal had jurisdiction to make the order that it made on the 12th September, 1951.

21. In arguing the objection as to the jurisdiction of the Tribunal counsel contended that the remedy provided by Section 7 of the Appellate Act is not contemplated for the usurpation of powers under cover of the provisions of the Act. in this connection counsel relied upon "Administrator City of Lahore v. Abdul Majid" AIR 1945 Lah 81 . Clearly, the decision in the last mentioned case has no application to a case where Jurisdiction is vested in a Tribunal as in the present case and the Tribunal either irregularly exercises that Jurisdiction or errs in the exercise of that jurisdiction. in AIR 1945 Lah 81 the Committee refused to sanction the building plan u/s 193 of the Punjab Municipal Act stating that the area was low lying and could not be properly drained. Section 225 of the Punjab Municipal Act provides that no refusal of a Committee u/s 193 to sanction erection or re-erection of a building shall be liable to be called in question otherwise than by an appeal. On the refusal of the Municipal Committee to sanction the plan Abdul Majid instituted the suit out of which the second appeal before the High Court arose. in the second appeal it was said that Abdul Majid should have Challenged the order of the Committee under the provisions of Section 235 of the Act by way of appeal. In deciding the point Mahajan, J. (Bhandari and Achhru Ram, JJ. concurring) said:

"When a jurisdiction is vested in a committee and it either irregularly exercises that jurisdiction or errs in the exercise of that jurisdiction, in those cases the remedy of the subject against the order of the committee is by preferring an appeal to the Commissioner under the provisions of Section 225 and the order of the Appellate authority would conclude the matter. Such a decision cannot be collaterally attacked in a civil Court. Where, however, the Committee acts in excess of the powers conferred by the Act or abuses those powers, then in those cases it is not exercising its jurisdiction irregularly or wrongly, but it is usurping powers which it does not possess and for usurpation of powers the remedy provided by the Act cannot be held to be exclusive."

22. In AIR 1945 Lah 81" all that was said was that the remedy provided by the Act cannot be held to be exclusive where the Committee acts in excess of the powers conferred by the Act or abuses those powers. In my opinion, it is not necessary to elaborate this point, for even in cases where jurisdiction is usurped by a Court in passing an order against which an appeal would lie, if it had been passed with jurisdiction, an appeal cannot be defeated on the ground that the order was made without jurisdiction. In any case the Bank has failed to establish that the Tribunal was guilty of usurpation of powers that it did not possess. That being so, the appropriate remedy of the Bank is to appeal to the Appellate Tribunal from the order passed by the Tribunal on the 12th of September, 1951 u/s 7 of the Appellate Court Act before applying to this Court under Article 226 of the Constitution.

23. Mr. Anand maintains that Section 7 of the Appellate Act provides an appeal from an order or a decision of an Industrial Tribunal and that the order passed by the Tribunal on the 12th September, 1951, is neither a decision nor an award within Section 7 of the Appellate Act. On the finding given hereinbefore that the term "award" in Section 2(b) of the Act contemplates both an "interim" and a final determination in regard to a single question, I hold that the order passed by the Tribunal on the 12th of September, 1951, falls within the definition of the expression "award" given in Section 2(b) of the Act. That being so, it is not necessary to investigate the question whether the word "decision" occurring in Section 7 of the Appellate Act means a decision of the Tribunal within Section 19(4) of the Act or includes the decision which was made by the Tribunal on the 12th of September, 1951.

24. Mr. Anand then maintains that no appeal is competent from an award of the Tribunal unless it is published by the appropriate Government u/s 17 of the Act for it is said that the award of the Tribunal has no binding force by itself unless the appropriate Government publishes the award u/s 17 of the Act.

25. In plain English Section 7 of the Appellate Act provides for an appeal from any award. Nowhere it is said in the Appellate Act that an appeal will lie from an award which has been published by the appropriate Government. In case the Legislature thought to provide an appeal from an award which had been published u/s 17 of the Act, the Legislature would have said so in Section 7 of

the Appellate Act. On the other hand Section 7 of the Appellate Act gives to the persons mentioned in Section 12 of the Act a right of appeal from any award published or unpublished. Section 10(1) of the Appellate Act which provides that an appeal u/s 7 of the Appellate Act may be preferred within 30 days from the date of the publication of award or decision where such publication is provided for by law under which that award or decision is made does in no way advance the case of the Bank. Clearly, the provision for limitation does not give the "terminus a quo" for the purpose of limitation of appeals. In Section 10 of the Appellate Act the time before which the appeal may be filed is given but not the date from which the period of limitation is to be reckoned. For these reasons, I think that the non-publication of the award does not affect its appealability u/s 7 of the Appellate Act. In these circumstances, it is not necessary to examine the correctness of the opinion expressed by the Appellate Tribunal in "Allan Berry & Co. Ltd. v. Their Workman (1951) 1 LLJ 328 that an "interim" award does not require publication.

26. Basing himself on the provisions of Section 11 of the Appellate Act counsel for the Bank said that on the 17th September 1951 no appeal could be preferred from the order passed by the Tribunal on the 13th of September 1951. The argument raised is that it was not possible to formulate objections to the award when reasons for the award were not given before the 24th of September, 1951. I do not accede to the argument raised, for if the Bank had appealed from the award made on the 12th of September, 1951, the objections on which the Bank resisted the claim for the grant of "interim" pay and allowances could have been taken in the memorandum of appeal. In any case after the 24th of September, 1951, supplementary objections could have been taken in appeal.

27. Counsel for the Bank then said that inasmuch as the Tribunal made the "interim" award without affording an opportunity to the Bank to substantiate by evidence their objections to the making of that award the High Court should interfere in these proceedings. In this connection reliance was placed upon *Khurshed Mody Vs. Rent Controller*, In that case Chagla, J. (Stone C. J. concurring) said:

"We agree that ordinarily the Court will require the petitioner to have recourse to his ordinary remedies, but if the Court finds that there is a breach Of a fundamental principle of justice, it would certainly not hesitate to issue this high prerogative writ of "certiorari"."

28. In overruling this objection I think it sufficient to mention that in no part of the application under Article 226 of the Constitution or in the affidavit of "Pandit" Somesh Chandra, Manager of the Bank, is it stated that a request was made to the Tribunal to allow the Bank to examine evidence before the "interim" award was given.

29. Giving the matter my anxious consideration, I find that the scheme of the Act is to set up a particular machinery by the use of which alone the industrial

dispute is to be determined. That being so, jurisdiction to question the award of the Tribunal otherwise than by the use of the machinery expressly provided by the Act would not be justified unless the Court is satisfied that the remedy provided by the Act is not sufficient or a case of usurpation of jurisdiction is established. In the present case the Appellate Act provides a specific and adequate legal remedy for the redress of injury, if any, arising out of the "interim" award of the Tribunal and it is for the Bank to pursue that remedy before the Bank applies to this Court for relief under Article 226 of the Constitution. No case of want of jurisdiction or excess of jurisdiction is established.

30. Finding as I do that Section 7, Appellate Act, gives a specific and adequate legal remedy to the Bank from the "Interim award" of the Tribunal made on the 12th of September, 1951. I think that in paragraph No. 38 of the application under Art. 226 of the Constitution there is suppression of material facts on which the rule for "certiorari" was moved. In case the Bank thought that the remedy provided by Section 7 of the Appellate Act was not available or that that remedy was illusory the Bank should have in the application for writ pointed out the non-availability or the illusory nature of the remedy.

31. For the foregoing reasons, I allow the preliminary objections, discharge the rule and dismissing with costs the application for the issuance of a writ of "certiorari" vacate the "ad interim" orders passed by this Court on the 18th of September 1951

Weston, C.J.

32. I agree, for the reasons given by my learned brother, that the order complained against is appealable as an "interim" award, and that we should decline to interfere on the short ground that alternative remedy exists u/s 7 of Act 48 (XLVIII) of 1948.