

(1959) 11 AHC CK 0010
In the Allahabad High Court
Case No : Special Appeal No. 10 of 1956

Punjab Sugar Mills Co. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-11-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 3

Citation : AIR 1960 All 444 : (1960) 1 LLJ 756

Hon'ble Judges : O.H. Mootham, C.J;S.N. Dwivedi, J

Bench : Division Bench

Advocate : R.C. Chatak, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Dwivedi, J.—The Punjab Sugar Mills Co. Ltd. Ghughli, has preferred this appeal against the order of Mr. Justice Chaturvedi dated 18-11-1955, by which he dismissed the appellant's writ petition under Article 226 of the Constitution.

2. The appellant manufactures sugar and also carries on some allied business. Its employees are organised in a trade union known as the Chini Mill Karamchari Sangh, Ghughli (hereinafter referred to as the Sangh). Some time in the year 1953 the Sangh raised a dispute in respect of the wages of six employees of the appellant, namely, Lakhan, Hansi, Sagni, Bansu, Tribeni and Rama. The State Government, by G. O. No. 1208(LC)/XVIII-LA-5/41 (GR)/1953, dated the 6th April 1953, referred the dispute to adjudication by Sri J. N. Khanna, Adjudicator, in accordance with the provisions of Sections 3, 4 and 8 of the U. P. Industrial Disputes Act, 1947. Before the Adjudicator the principal contention of the appellant was that these six employees were not "workmen" within the meaning of the Act as they were the personal domestic servants of officers of the company and that, therefore, the Adjudicator had no jurisdiction to hear and decide the dispute.

3. The Adjudicator overruled this contention as well as other objections of the appellant. He held that the six employees were "workmen" within the meaning of the Industrial Disputes Act, and the dispute referred by the State Government was an "industrial dispute." The Adjudicator gave his award in favour, of the aforesaid six workmen on 1-7-1953. The appellant preferred an appeal against the award of the Adjudicator to the Labour Appellate Tribunal of India, Lucknow Bench, (hereinafter called the Tribunal). The contention that the six employees were not "workmen" and the dispute referred by the State Government was not an "industrial dispute" was re-canvassed before the Tribunal. The Tribunal rejected the contention and dismissed the appeal subject to some modification in the award (which is not material for our purposes).

4. Aggrieved by the award of the Adjudicator and the appellate order of the Tribunal, the appellant filed a petition under Article 226 of the Constitution in this Court. The appellant impleaded the State of Uttar Pradesh, the Tribunal and the Adjudicator as some of the respondents to the petition. The two main relief sought were:

"(i) to issue writs of certiorari to the Tribunal and the Adjudicator to bring the order dated 31st May 1955 and the award dated the 1st July 1953 for being quashed by this Court, and

(ii) to issue a writ in the nature of mandamus commanding the State of Uttar Pradesh and the Regional Conciliation Officer, Gorakhpur, to forbear from enforcing the Tribunal's order dated 31-5-1955 and the Adjudicator's award dated 1st July 1953."

The petition was heard by Mr. justice Chaturvedi who dismissed it by the order, the subject of the present appeal,

5. At the threshold of the hearing of the appeal the respondents raised a preliminary objection. It was" contended that the Tribunal has long since ceased to exist, that the record of Appeal No. 339 of 1953, in which the Tribunal passed the impugned order dated 31-5-1955, was not in the control Or custody of any person or authority within the territorial jurisdiction of this Court, which could not, therefore, issue a writ in the nature of certiorari for quashing the said order of the Tribunal.

Learned counsel for the appellant does not dispute that the Tribunal has become extinct, and that the record of Appeal No. 339 of 1953 is not at the moment in the control or custody of any person in the State o? Uttar Pradesh. In similar circumstances, this Court has already held in several cases that it has no power under Article 226 of the Constitution to issue a writ in the nature of certiorari for quashing the order of the Tribunal, We accordingly hold that the appellant is not now entitled to have the impugned order of the Tribunal quashed. Nor can we quash by writ of certiorari the Adjudicator's award which has merged in the appellate order of the Tribunal.

6. Learned counsel for the appellant then contended that he was still entitled to a writ in the nature of mandamus commanding the State of Uttar Pradesh and the Regional Conciliation Officer, Gorakhpur, to refrain from enforcing the order of the Tribunal. The contention was thus developed: The six employees were not "workmen" as defined in the Industrial Disputes Act, 1947. The dispute, which related to them and was referred by the State of Uttar Pradesh to the Adjudicator, was, therefore, not an "industrial dispute." The Adjudicator and the Tribunal suffered from lack of inherent jurisdiction over the dispute, and the award and the order of the two authorities were, therefore, entirely null and void.

The State of Uttar Pradesh and the Regional Conciliation Officer, Gorakhpur, could not enforce a void order of the Tribunal, and they could be restrained by this Court from enforcing the said order notwithstanding that the Tribunal had become extinct and the record of Appeal No. 339 of 1953 was lodged outside the territorial jurisdiction of this Court.

7. It was held by this Court in the case of Ch. Moinuddin Vs. Deputy Director Military Lands and Cantonments, Eastern Command and Others, , that where an order of an authority, who was not resident within the territorial jurisdiction of this Court, was absolutely null and void, it could be ignored and the authority, who intended to enforce the void order, could be restrained if he were resident within the territorial jurisdiction of this Court. In that case, this Court directed an authority, who was resident within the territorial jurisdiction of this Court, to refrain from disturbing the petitioner's possession over the disputed land in pursuance of the order because it was held that the latter's order was absolutely null and void. That case was followed by another Division Bench of this Court in the case of E. Sefton and Co., Mirzapur Vs. Textile Mill Mazdoor Union and Others, In E. Sefton and Co., Mirzapur Vs. Textile Mill Mazdoor Union and Others, , the employer filed a writ petition praying for the issue of a writ in the nature of certiorari to the Regional Conciliation Officer, Allahabad, and the Labour Appellate Tribunal of India, Lucknow, to bring the award and the order for being quashed. It was also prayed that the notification of the State of Uttar Pradesh referring the dispute to adjudication should also be quashed, because the dispute was not an "industrial dispute." It was held,

""Where the conferment of jurisdiction is ab initio void, there is no necessity for issue of any writ of certiorari to quash the decision of the Tribunal and the Court would be competent to issue appropriate directions and orders completely ignoring the effect of that decision."

In that case, the Court came to the conclusion that the dispute referred to adjudication was an "industrial dispute" and consequently no relief was granted to the employer under Article 226 of the Constitution.

8. Following the principle laid down in these cases we accordingly proceed to determine whether the dispute referred to adjudication in the instant case was an "industrial dispute." The Tribunal has found that all the six employees, whose

cases were referred for adjudication by the State of Uttar Pradesh, were on the pay-roll of the appellant. The appellant paid them their monthly wages and bonus. Their names were entered in a printed daily attendance register, maintained by the appellant, and called the Officers' servants' attendance register.

It has also been found that the appellant's time-keeper marked their attendance on the attendance register, and that the appellant also gave them some leave, although the rules governing their leave were different from the rules regulating the leave of other employees. The Tribunal has further found that these employees were not working within the precincts of the appellant's factory but were working at the residential quarters of some of the appellant's Officers, presumably because those Officers were entitled, as a term of their employment, to the service of some servants at the expense of the appellant. The question, therefore, is whether, on these facts, the six employees were "workmen" and the dispute relating to them was an "industrial dispute."

9. The dispute was referred by the State Government by virtue of the provisions of Section 3 of the U. P. Industrial Disputes Act, 1947. That Act adopts for its purposes the definitions of "industry," "industrial dispute" and "workmen" in the Central Industrial Disputes Act of 1947 (hereinafter called the Act). The definitions of those words, so far as material for purposes of this case, are set out below:

3 (j) : "Industry" means any business, trade, undertaking, manufacture or calling of employers

3 (k) -- "Industrial Dispute means any dispute or difference between employers and workmen which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person.

3 (s) -- "Workman" means any person employed. . . in any industry to do any skilled or unskilled manual or clerical work for hire or reward

10. A person will not therefore be a "workman" unless he (1) is employed (2) in an industry (3) to do skilled or unskilled manual or clerical work, and (4) for hire or reward. Learned counsel for the appellant concedes that the six employees in the case before us fulfilled the requirements Nos. (1), (3) and (4). He has accepted the findings recorded by the Tribunal and does not dispute that there did exist a jural relationship of master and servant between the appellant and the six employees, and that the latter were engaged to perform unskilled manual work on payment of regular wages. It is, however, strenuously contended that they were not "employed in any industry." In other words, they were not workmen, because they were not employed in any industry, inasmuch as they were working at the residential quarters of some of the appellant's officers and not inside the appellant's factory premises. The substance of the contention seems to be that the employment of persons inside the factory is the sine qua

non of a "workman."

We are unable to lend countenance to this narrow interpretation, which we think to be unrealistic. In our view the preposition "in" before "any industry" in the definition of "workman" has been used by the Legislature to signify the inclusion of persons employed, and not their position or location, in the industry as a whole. According to the Shorter Oxford English Dictionary (3rd Edition) the preposition "in" also means "in reference to." Having regard to the legislative object of preventing strikes and locks-out and maintaining supplies in the country, we are of opinion that the expression "employed in any industry" should be construed to mean employment in reference to any industry, business or trade. There is little doubt that the six employees in this case were employed in reference to the business of the appellant. They were accordingly workmen and their wage-dispute was an industrial dispute.

11. The question can be looked at in another way. The business in the instant case is the entire business of cane-crushing, manufacture of sugar, and its sale as well as some allied business. In such a business one worker may be engaged in the production service, a second in the maintenance service, and a third in what may be described as the peripheral service. The location of the workers is, however, of no material consequence, because all of them would contribute, directly or indirectly, to the ultimate planned result.

12. The six employees in the present case were attached to the residential quarters of some of the appellant's officers. There they were rendering domestic service and administering to the comforts of the officers. They would, therefore, fall in the category of peripheral service, and the foregoing discussion leads us to the inevitable conclusion that they were employed in the industry of the appellant. They were, therefore, workmen within the meaning of the term "workman" in the Act. Their wage-dispute would be a dispute regarding the terms of their employment and would constitute an "industrial dispute" within the meaning of that term in the Act. The Adjudicator and the Tribunal had, therefore, full jurisdiction over the dispute, and their award and the order cannot be said to be null and void. In the premises this Court has no power to issue a writ in the nature of mandamus to the State of Uttar Pradesh and the Regional Conciliation Officer, Gorakhpur, to restrain them from enforcing the order of the Tribunal.

13. All other grounds of attack in the memorandum of appeal seek to impugn the validity of the order of the Tribunal on the ground that it was vitiated by an error of law apparent on the face of the record; they do not go to the root of the matter and do not allege an inherent lack of jurisdiction in the Tribunal. We cannot hear and decide them, because we have already held that the order of the Tribunal cannot be quashed by us in the circumstances of the case.

14. We, therefore, affirm the order of Mr. Justice Chaturvedi and dismiss the appeal with costs.