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**(1957) 12 P&H CK 0023**  
**In the Punjab And Haryana At Chandigarh**

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| Ram Lal Guramal Textile Mills | Vs | APPELLANT  |
| State of Punjab and Others    |    | RESPONDENT |

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**Date of Decision :** 30-12-1957

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 10, 2, 3, 33, 33A

**Citation :** (1958) 2 LLJ 245

**Hon'ble Judges :** Bishan Narain, J

**Bench :** Single Bench

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## Judgement

Bishan Narain, J.—The Punjab Government has referred the following dispute between Ramlal Guramal Textile Mills, Amritsar, hereinafter called the management, and its workmen to the labour court u/s 10(1)(c) of the Industrial Disputes Act:

Whether the services of Sri Ram Singh, son of Bishan Singh, were wrongfully terminated on 15 February 1954 ? If so, whether he is entitled to wages for the period 12 February 1954 to 5 January 1956, i.e., till the date of closure ?

The management has filed this petition under Article 226 of the Constitution of India challenging the validity of the reference.

2. The facts relevant for the decision of this petition are not in dispute. On 6 June 1952, the Government referred six disputes between various textile mills, etc., and their workmen for adjudication to the First Industrial Tribunal u/s 10(1)(c) of the Act. While the reference was pending Ram Singh, an employee of the petitioning management, made an application u/s 33A of the Act complaining of his wrongful dismissal on 12 February 1954. This reference, however, was rescinded by notification dated 7 December 1954, and on the same day by another notification the dispute was referred to the second tribunal. One of the consequences of these notifications was that the application u/s 33A filed by Ram Singh became infructuous. Before the second industrial tribunal could adjudicate upon the disputes, the Government again intervened and one of the six disputes

was separated from the others, presumably, so that it may be decided without undue delay (Reference No. 4 of 1955). This separated dispute reads:

Whether the retrenched workers should be reinstated with due compensation or not.

It is the respondents' case that thereafter a list of retrenched workmen including that of Ram Singh was filed before the tribunal. The management closed its business on 5 January 1956 before this dispute in Reference No. 4 of 1955 was decided. The Government then issued a fresh notification withdrawing Reference No. 4 of 1955 so far as it related to the petitioning management. This notification was issued on 5 May 1956. A year later in May 1957 the impugned notification was issued.

3. Now, from these facts it is clear that the dispute relates to the wages of Ram Singh for the period 12 February 1954 to 5 January 1956, i.e., till the date of the closure of the industry. It accordingly relates to a period when the industry was in existence. Therefore, the mere fact that the reference was made after the closure of the business does not render it invalid- *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*. Moreover, the services of Ram Singh were terminated on 12 February 1954, and it is clear from the application of this respondent u/s 33A in 1954 challenging the validity of his dismissal that a dispute existed between the management and its workmen prior to the closure of the business.

4. The learned Counsel for the management has argued that this dispute could not be considered to be an industrial dispute within the Act and therefore the Government could not refer it to the labour court u/s 10(1)(c) of the Act. Section 2(k) of the Act defines an industrial dispute. After examining the scheme of the Act and this Section 2(k), the Supreme Court, without deciding the matter finally, observed in *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*,

Notwithstanding that the language of Section 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.

5. This matter came up again before the Supreme Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, and the above observation was approved and the case was decided accordingly. It, therefore, follows that if the present dispute is only between the individual workman and the management, then the reference was invalid.

6. The respondent's case, however, is that since his dismissal, this dispute has

been before the industrial tribunal as it had been taken up by the union which at that time represented workmen working in this mill and that at the time of the present reference the trade union had taken up the dispute and therefore in accordance with the decisions of the Supreme Court, the present dispute is an industrial dispute.

7. Now, Section 33A enables an individual workman when an action is taken against him in contravention of the provisions of Section 33, to file a complaint to the tribunal before whom an industrial dispute is already pending. In the present case Ram Singh had made this complaint against his dismissal by the management "during the pendency of an industrial dispute. It was, however, a complaint of an individual and therefore it could not make his dispute with the management an industrial dispute unless it is shown that at the time of that application his fellow-workmen Or the trade union had taken up that dispute and there is no such allegation in this case.

8. It is alleged in Para. 5 of the written statement in the present case that in Reference No. 30 of 1954 and that of No. 4 of 1955 the trade union concerned had included the name of Ram Singh in the list of dismissed workers When it was pending before the second industrial tribunal but that dispute could not be decided as, on 15 May 1956, the Government withdrew the management's dispute from reference. It appears that thereafter it was only in November 1956 that the Textile Mazdoor Extra Union again called upon the management to pay the wages due to Ram Singh but its efforts bore no fruit. It is argued that the dispute had become an industrial dispute with effect from 1954 when Reference No. 30 of 1954 was made. The management, however, counters this argument by contending that the union took up this matter in November 1956, i.e., about ten months after the closure of the industry, and it was only then that the dispute became an industrial dispute, and according to the learned Counsel for the petitioners it was then too late for the Government to refer this dispute for adjudication to the tribunal inasmuch as by that time the industry had ceased to be in existence.

9. After a careful consideration of the matter I have come to the conclusion that the respondent's contention in this matter must prevail. It is no doubt true that Reference No. 30 of 1954 and that of No. 4 of 1955 related to retrenched workmen only, but a person dismissed in contravention of Section 33 would be considered to be a workman who had been dismissed as retrenched. There is a specific allegation in Para. 5(c) and (d) that the union had taken over this dispute and that could be done only on the basis that Ram Singh had been dismissed on the ground of retrenchment. Whether that was correct or not does not affect the position. The management has, it is to be noticed, not denied this allegation by filing any replication to the written statement in the present case. I am, therefore, of the opinion that this dispute had become an industrial dispute in 1954. It was suggested in the course of arguments that the present union did not exist in 1954, but this suggestion is not supported by any affidavit. Even if it

be so, the position is not changed. As long as a trade union which for the time being represents a workman of an industry takes up an individual workman's dispute, it continues to remain an industrial dispute till it is finally decided and it is not necessary that the same union may remain in charge of that dispute till adjudication. A new trade union by amalgamation or otherwise may come into existence which from that date may represent the workmen of that industry and in such a case if the new union takes over the dispute, then the dispute does , not cease to be an industrial dispute. It may happen in some cases that a number of workmen of an industry may take up the dispute of an individual workman and thus make it an industrial dispute. Before the dispute is, however, settled, a trade union representing the workmen of that industry may be organized which may take up the dispute. I see no reason for holding that in such circumstances the dispute on its being taken up by the union or a new union would become a new industrial dispute and will not be considered to be in continuation of the old industrial dispute. In this connection it must be remembered that the basis of the idea that a dispute of an individual becomes an industrial dispute when it is taken up by a trade union or by other workmen is that such a dispute involves a principle which affects the working conditions of all or considerable portion of the workmen in that industry. Such a situation may also arise when provisions of Section 33 are contravened by the management. Taking all this into consideration, I am of the opinion that this contention raised on behalf of the management is without any force.

10. Assuming that the present dispute became an industrial dispute only in November 1956, When it was taken over by the present union, the position is not very different. The dispute relates to a period before the closure of the business and mere delay in the union taking over the dispute will not affect the position. The Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, has observed.

We think that on a true construction of Section 3, the power of the State to make a reference under that section must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

It will be noticed that their lordships referred to a dispute and not to an industrial dispute. I am really unable to see why a dispute like the present one should not be decided under the Industrial Disputes Act simply because the business is closed before the trade union takes over the dispute. After all the dispute relates to a period prior to the closure of the business and the object of the Industrial Disputes Act is to make available machinery created by it for settlement of such disputes for the sake of amity in industrial sphere of this country.

11. For all these reasons I am of the opinion that the management has failed to show that the present dispute was not an industrial dispute. That being so,

reference made by the Government is valid.

12. The result is that this petition fails and is dismissed with costs. Respondent 3 only will be entitled to get these costs as respondents 1 to 2 neither filed any written statement nor contested the petition before me. Counsel's fee Rs. 100.