(1988) 09 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1068 of 1979

Sayar APPELLANT

Vs

Judge, Labour Court and Others RESPONDENT

Date of Decision : 20-09-1988

Acts Referred:

Coking Coal Mines (Nationalisation) Act, 1972 — Section 17, 9
Industrial Disputes Act, 1947 — Section 14, 17, 17A, 3, 4
Industries (Development and Regulation) Act, 1951 — Section 18
Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 17, 5

Citation : (1988) 2 RLW 61 : (1988) 2 WLN 305

Hon'ble Judges : Jagdish Sharan Verma, C.J;Farooq Hasan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagdish Sharan Verma, C.J.—The petitioner was an employee in the Mahalaxmi Milk Co. Ltd. Beawar since 1947. He was also an active Trade Unionist. The management of the mills was taken over by the Central Government with effect from January 9, 1967 and an Authorised Controller was appointed u/s 18A of the Industries (Development and Regulation) Act, 1951. During continuance of the management of the Government through the Authorised Controller, on January 19, 1973 a charge-sheet was served on the petitioner for alleged mis-conduct and he was dismissed by the Authorised controller on April 16, 1973. Petitioner raised an Industrial dispute challenging the termination of his service which led to a reference of the dispute for adjudication by the Labour Court. In the meantime the Sick Textile Under-taking (Nationalisation) Act, 1974 (here in after referred as ''the 1974 Act'') came into force resulting in vesting of the rights of owner of the Mills in the Central Government and then being transferred to, and vested in the National Textile Corporation. The Labour Court rejected the petitioner''s claim on the ground that no relief could be granted against the owner of the textile undertaking which had been nationalised as also the Government or the National Textile Corporation. In short, it has been held that the effect of this change over has been to deprive the petitioner of his right to get any relief against anyone. Hence this petition.

2. The contention of the learned Counsel for the petitioner is that the petitioner is entitled to relief against the National Textile Corporation since the matter falls within the ambit of Section 5(2)(c) and Section 17(1) of the Sick Textile Undertakings (Nationalisation) Act, 1974. Reliance was placed by the learned Counsel for the petitioner on the decision in The Workmen Vs. The Bharat Coking Coal Ltd. and Others, involving construction of corresponding provisions contained in the Coking Coal Mines (Nationalisation) Act, 1972. In reply, learned Counsel for the National Textile Corporation contended that the dispute relating to a workmen dismissed prior to nationalisation of the Undertaking under the 1974 Act abates since it is not saved by Section 4(6) and Section 5(3) of the Act. It was urged that the matter does not fall within the ambit of Section 5(2) or Section 17(1) of the Act. It was urged in the alternative that the relief, if any, can be given only against the owner of the Sick Undertakings and not against the National Textile Corporation.

3. The only real controversy emerging from the rival contentions is, whether this matter falls within Section 5(2)(c) of the Sick Textile Undertakings (Nationalisation) Act 1974? It is common ground that if the answer is in the affirmative then only the National Textile Corporation would be liable. No other point was raised on behalf of the respondents. The result, therefore, is that if it is held that the matter is covered by Section 5(2)(c) of the 1974 Act then the petitioner would be entitled to the relief of reinstatement with full back wages against the National Textile Corporation since the petitioner''s claim has not been contested on any other basis throughout.

4. A brief resume of the events leading to Nationalisation of this Textile Undertaking may be given. The management of several Textile Undertakings was taken over by the Central Government under the Industries (Development and Regulation) Act, 1951. Thereafter the management of many more Textile undertakings was taken over by the Central Government under the Sick Textile Undertakings (Taking over of Management) Act, 1972 pending their Nationalisation in public interest. With a view to reorganising and rehabilitating the said Textile Undertakings in general public interest it became necessary to Nationalise the said Undertakings. To achieve this object, the Sick Textile Undertakings (Nationalisation) Act, 1974 was enacted to provide for the acquisition and transfer of the Sick Textile Undertakings and the right, title and interest of the owners in respect of these Sick Textile Undertakings specified in the First Schedule. The Mahalaxmi Mills Company, Beawar (Rajasthan) was a Sick Textile undertaking specified in the First Schedule to the Act.

5. Section 3 of the 1974 Act provides for acquisition of rights of owner in respect of the Sick Textile Undertakings. Under Sub-section (1) from the appointed day, (April 1, 1974) the right etc. of the owner stood transferred and vested absolutely in the Central Government and by subsection (2) the same

immediately thereafter stood transferred to, and vested in the National Textile Corporation. This is how the National Textile Corporation came to be vested with the owner''s right, title and interest in the Sick Textile Undertaking with effect from April 1, 1974. Section 4 provides for general effect of vesting. Section 4 provides that the owner would be liable for prior liabilities, other than those specified in Sub-section (2). Section 14 provides for the employment of certain employees to continue. These are the relevant provisions of the 1974 Act which are material for our purpose.

6. Section 4(6), Section 5 and Section 14(1) which are material are as under:

4. General effect of vesting:

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[6] If, on the appointed day, any suit, appeal, or other proceeding of whatever nature in relation to any matter specified in Sub-section (2) of Section 5 in respect of the Sick Textile Undertaking, instituted or preferred by or against the Textile Company, is pending, the same shall not abate, be discontinued or be, in any way-prejudicially affected by reason of the transfer of the Sick Textile Undertaking or of any thing contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the National Textile Corporation.

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5. Owner to be liable for certain prior liabilities-(1) Every liability, other than the liability specified in Sub-section (2), of the owner of a Sick Textile undertaking, in respect of any. period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

(2) Any liability arising in respect of:

[a] loans advanced by the Central Government or a State Government, or both to a Sick Textile Undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government.

[b] amounts advanced to a Sick Textile Undertaking (after the management of such undertaking had been taken over by the Central Government), by the National Textile Corporation or by both, together with interest due thereon.

[c] wages, salaries, and other dues of employees of the Sick Textile undertaking in respect of any period after the management of such undertaking had been taken over by the Central Government.

shall, on and from the appointed day, be the liability of the Central Government and shall be discharged, for and on behalf of that Government by the National Textile Corporation as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that:

[a] save as otherwise expressly provided in this section or in any other section of this Act, liability, other than the liability specified in Sub-section (2), in relation to a Sick Textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

[b] no award, decree or order of any court, Tribunal or other authority in relation to any Sick Textile Undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in Sub-section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation;

[c] no liability of any Sick Textile Undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

Explanation.-In this section, "State Textile Corporation" means a corporation, formed and registered under the Companies Act, 1956, in a State, which is in charge of the management of a Sick Textile undertaking either as a person authorised under the Industries (Development and Regulation) Act, 1951, or as the Custodian under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 and includes the West Bengal State Textile Corporation Limited which has advanced amounts to Sick Textile Undertaking in the State.

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(Emphasis supplied)

14. Employment of certain employees to continue -[I] Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed day, employed in a Sick Textile Undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation, and shall hold office or service in the National Textile Corporation with the samer lights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such Sick Textile Undertaking has not been transferred to, and vested in the National Textile Corporation, and shall continue to do so unless and until his employment in the National Textile Corporation is duly terminated or until his remuneration terms and conditions of employment are duly altered by the National Textile Corporation.

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7. In our opinion the plain language of the above quoted provisions in the 1974 Act leaves no doubt about the liability of the National Textile Corporation in the

present case. More over, decision in Bharat Coking Coal Ltd''s case further reinforces this conclusion. Section 4 of the Act provides for the general effect of vesting. Sub-section (6) clearly says that any proceeding etc. in relation to any matter specified in Sub-section (2) of Section 5 in respect of the Sick Textile Undertaking pending on the appointed day (April 1, 1974) shall not abate and it may be continued and enforced by or against the National Textile Corporation. This is a clear provision for the liability of National Textile Corporation in a pending proceeding in respect of a prior liability of the Sick Textile Undertaking. Section 5 then deals with prior liabilities, Sub-section (1) provides that the owner of a Sick Textile Undertaking would be liable for every liability, ''other than the liability specified in Sub-section (2).'' Then comes Sub-section (2) which specifies the liability of the Central Government which is to be discharged on its behalf by the National Textile Corporation. Clauses (a), (b) and (c) of Sub-section (2) specify certain liabilities prior to the appointed day (April 1,1974) of this kind and the common feature is that all these liabilities are for the period ''after the management of such undertaking had been taken over by the Central Government upto the date of nationalisation (April 1,1974) under the 1974 Act It is clear that all the liabilities specified in Sub-section (2) for the period after taking over the management of the Sick Textile undertaking till nationalisation are not the liability of the owner under Sub-section (1) but of the Central Government which are to be discharged on its behalf by the National Textile Corporation. The reason is obvious. After the management of the undertaking was taken over by the Central Govt. under the 1951 or the 1972 Act, it was not considered reasonable to make the owner liable for any period thereafter and it was considered fair that the Central Govt. should be liable till the date of nationalisation (April 1, 1974) and the liability of Central Government should be discharged on its behalf by the National Textile Corporation to whom the right, title and interest of the owner stood transferred and vested. Sub-section (3) clarifies this position by proving that the Central Government or National Textile Corporation cannot be held liable for any prior liabilities except those specified in Sub-section (2). Section 14 is the provision for continuance of the employment of employees of the undertaking. Subsection (1) provides that every person who is a workman within the meaning of Industrial Disputes Act, 1947 and has been immediately before the appointed day (April 1, 1974) employed in a Sick Textile Undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation.

8. In the present case, the petitioner was dismissed from service by the Authorised Controller on April 16, 1973 after the management of the Sick Textile Undertaking had been taken over by the Central Govt. and prior to nationalisation with effect from 1-4-1974 under the 1974 Act. The proceeding for adjudication of the industrial dispute arising from petitioner''s dismissal was pending on April 1, 1974. Accordingly, by virtue of Section 4(6) it did not abate and could be continued and the relief obtained enforced against the National Textile Corporation. The relief of reinstatement and payment of back wages

granted to the petitioner on his termination being held invalid would automatically result in his continuing as an employee of the National Textile Corporation. On and from the appointed day i.e. April 1, 1974, by virtue of Section 14(1) of the 1974 Act. The claim of the petitioner for reinstatement and back wages from the date of dismissal (April 16, 1973) upto the appointed day (April 1, 1975) would fall u/s 5(2)(c) since it is in respect of a period after the management of the undertaking had been taken over by the Central Government. For the liability from the appointed day (April 1, 1974) the obvious answer is in Section 14(1) which says that such an employee continues as an employee of the National Textile Corporation. We see no difficulty in reaching this conclusion from the plain language of these provisions.

9. The Supreme Court decision in Bharat Coking Coal Ltd. (supra) related to a dismissed workman of Colliery which was nationalised and vested in the Central Government and thereafter in the Bharat Coking Coal Ltd. by virtue of the provisions contained in the Coking Coal Mines (Nationalisation) Act, 1972. This change occurred during the pendency of an industrial dispute arising from dismissal of some workmen and a question of liability arose as a result of award of the Industrial Tribunal holding the dismissal to be unjustified. The Bharat Coking Coal Ltd. was held liable by the Tribunal but the High Court quashed that award in a writ petition. Thereupon the workmen approached the Supreme Court which allowed the appeal and held the Bharat Coking Coal Ltd. to be liable. This conclusion was reached on construction of Sub-sections (1) and (2) of Section 9 and Sub-section (1) of Section 17 of the Coking Coal Mines (Nationalisation) Act, 1972. There is no dispute that Sub-section (1) of Section 17 and Sub-sections (1) and (2) of Section 9 of that Act correspond to subsection (1) of Section 14 and subsections (1) and (3) of Section 5 of the 1974 Act. On the basis of subsection (1) of Section 17 of that Act their Lordship held that the dismissed workman was a workman entitled to continuance in service. It was held that no distinction could be made between those whose names were actually on the rolls and those whose names though not physically on the rolls were deemed in law to be on the rolls. Thus a dismissed workman whose dismissal has been held to be invalid is deemed in law to be on the roll and entitled to benefit of continuance in service according to such a provision The relevant portion of the Supreme Court decision on this point is as under:

Section 17 is a special provision relating to workman and their continuance in service not with standing the transfer from private ownership to the Central Government or Government Company. this is a statutory protection for the workmen and is express, explicit and mandatory. Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been, immediately before the appointed day in the employment of a mine, shall become an employee of the Government or the Government company and continue to do so as laid down in Section 17A ''Workman'' is defined in the Industrial Dispute Act to mean any person employed in any industrial. (We omit the unnecessary words) and includes, any such person who has been dismissed and whose dismissal has led to a dispute. It is perfectly plain that the 40 workmen who were dismissed and whose dismissal led to the industrial dispute are ''workmen'' within the meaning of Section 17(1) of the Act Irrefutably follows the inference that they are workmen entitled to continuance in service as provided for in Section 17. It is not open to contend that because they had been wrongfully dismissed and, therefore, are not Physically on the rolls on the date of the take over, they are not legally workmen under the new owner. The subtle eye of the law transcends existence on the gross level. The statutory continuancy of service cannot be breached by the wrongful dismissal of the prior employer.

The present one is an a fortiori case. We have not the slightest doubt that what matters is not the physical presence on the rolls but the continuance in service in law because the dismissal is honest.

The construction we have made of Section 14(1) of the 1974 Act is reinforced by this decision.

10. The significant difference between Section 9 of the Coking Coal Mines (Nationalisation) Act, 1972 and Section 5 of the 1974 Act is the presence of Sub-section (2)in Section 5 of the. 1974 Act and exclusion from Sub-section (1) of matters falling within the ambit of Sub-section (2). Sub Section (2) of Section 5 of the 1974 act expressly provides for the liability of the central Government, and, therefore, of the National Textile Corporation in respect of the matters covered by it which are for the period subsequent to taking over the management by the Central Government prior to nationalisation under the 1974 Act. Thus in the 1974 it is expressly provided that a matter covered by sub Section (2) of Section 5 is the liability of the central Government to be discharged by the National Textile Corporation and not the liability the owner of the Sick Textile Undertaking. The result is that Sub-section (2) of Section 5 of the 1974 Act places the matter beyond doubt and provides a clinching reason to uphold the petitioners contention. In fact this additional provision in the 1974 Act instead of distinguishing the Supreme Court decision, further reinforces that conclusion.

11. As a result of the aforesaid discussion it is held that the industrial dispute arising out of petitioner''s dismissal on April 16, 1973 had to be continued against the National Textile Corporation and the relief granted therein is to be enforced against it. Labour Court erred in taking the view that neither the Central Government nor the National Textile Corporation could be held liable. in view of the fact that the proceeding before the Labour Court was contested only on this ground the petitioner is held entitled to the relief of reinstatement and back wages against the National Textile Corporation. We, therefore, set aside the Labour Court''s award and grant the relief of reinstatement of the petitioner with full back wages from the date of dismissal (April 16, 1973) against the National Textile Corporation. We may add, that the relief of continuance in service is subject to the provision of age of superannuation. In case the petitioner has attained the prescribed age of superannuation, he shall be entitled only to back

wages from the date of dismissal (April 16, 1973) to the date on which he attained the age of superannuation. The petition is allowed accordingly. Counsel''s fee Rs. 500/-if certified.

