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In the Madhya Pradesh High Court

Case No : M.P. No. 338 of 1965

Sheo Narayan Choudhari and another — APPELLANT

Vs

A.W. Kanwadikar, Member Judge, the Industrial Court, M.P. and others — RESPONDENT

Date of Decision : 29-09-1966

Acts Referred:
Madhya Pradesh Industrial Relations Act, 1960 — Section 34, 61

Citation : (1966) JLJ 1091

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhave, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—The two Petitioners, who are employed as masons in the Bhilai Steel Plant, Bhilai, filed separate applications u/s 61 of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act), in the Labour Court, Raipur, for restoration of the reduction effected by the management, namely, the Respondent No. 3, the General Manager of the Hindustan Steel Ltd., in their wages as a measure of punishment after finding that some charges had been established against them.

2. The Labour Court found that the reduction in the wages of the applicants was an "illegal change" within the meaning of Section 34 of the Act and accordingly made an order directing the Respondent No. 3 to withdraw the "change" and restore the reduction in the wages of the Petitioners. Thereupon, the Respondent No. 3 preferred revision petitions before the Industrial Court, Indore, against the common decision of the Labour Court granting the Petitioners'' applications u/s 61 of the Act. The Industrial Court took the view that the matter of the reduction of the Petitioners wages was an industrial matter as specified in Schedule II to the Act and consequently the Petitioners who desired to have the cut in their

wages restored could move the Labour Court for that purpose only u/s 31(3) of the Act after approaching the employer with a request for the change and if no agreement was reached in respect of the change within the prescribed period; and that as admittedly the Petitioners did not approach the employer as required, by the proviso to Sub-section (3) of Section 31,the Labour Court had no jurisdiction to entertain their applications. The Industrial Court also held that the reduction in the Petitioners'' wages did not amount to an illegal change as defined by Section 34 of the Act. On this view, the Industrial Court set aside the decision of the Labour Court and dismissed the Petitioner''s applications.

3. The question raised by this petition is whether the Petitioners'' applications u/s 61 of the Act for a restoration of the cut in their wages were maintainable. That question has to be answered on a consideration of the effect of certain provisions of the Act to which a reference must first be made. Section 2 (7) of the Act defines "change" as meaning "an alteration in an industrial matter". The definition of "industrial matter" as given by Section 2(18) is that it means "any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or refusal to employ and includes......" Section 31 of the Act runs thus:

31. Notice of change.-(1) An employer intending to effect any change in respect of an industrial matter specified in Schedule I shall give notice of such intention in the prescribed form and manner to the representative of employees and to such other persons as may be prescribed.

(2) A representative of employees desiring a change in respect of ah industrial matter, which is neither covered by standing orders nor is specified in Schedule If, shall give notice thereof in the prescribed manner to the employer concerned and to such other persons as may be prescribed.

(3) A representative of employees or an employee desiring a change in respect of an industrial matter specified in Schedule II or any other matter arising cut of such charge may make an application to Labour Court in such manner as may be prescribed:

Provided that no such application shall lie unless the representative of employees or the employee, as the case may be, has in the prescribed manner approached the employer with the request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

An "illegal change" has been defined by Section 34 as meaning a change in any standing order made except in accordance with the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, any change in any industrial matter mentioned in Schedule I made in the circumstances enumerated in Section 34, any change in contravention of the terms of a registered agreement or settlement, or an order, decision or award and failure to carry out the terms of a registered agreement or settlement, or an order,

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decision or award. Section 61 of the Act provides that the Labour Court shall have the power, inter alia, to decide whether any change is illegal under the Act and to require any employer to withdraw any change held to be illegal.

4. It will be seen from the aforesaid provisions that any change in respect of an industrial matter specified in Schedule I can be effected by an employer only in accordance with Sub-section (1) of Section 31; if a representative of employees desires a change in respect of an industrial matter not covered either by standing orders or by Schedule II, then he has to proceed in accordance with Sub-section (2) of Section 1; and if a representative of employees or an employee desires a change in respect of an industrial matter specified in Schedule II or any other matter arising out of such change, then he can move the Labour Court for redress only after an application as contemplated by the proviso to Sub-section (3) of Section 31 read with Rule 34 of the Madhya Pradesh Industrial Relations Rules, 1961, is made and no agreement is arrived at between the employer and the employee in respect of the mortgage.

5. The definition of "illegal change" given by Section 34 does not touch in any way a change which can be made only in accordance with Sub-sections (2) and (3) of Section 31. By that provision any change in any industrial matter mentioned in Schedule 1 which can be effected only under Sub-section (1) of Section 31 is declared to be illegal if made in the circumstances enumerated in Section 34 (b). Section 34 no doubt speaks of other illegal changes. But, here, there is no question of the reduction in the Petitioners'' wages being a change made in any standing order or any change in contravention of the terms of a registered agreement, settlement or effective award, or one arising out of failure to carry out the terms of a registered agreement, or settlement, or an order, decision or award under the Act.

6. If, therefore, the matter of reduction in the Petitioners'' wages is an industrial matter falling under Schedule I and if the reduction has not been made in accordance with Sub-section (1) of Section 31, then the reduction would clearly be an "illegal change" u/s 34 of the Act and the Petitioners have the right to move the Labour Court to declare the change to be illegal, praying that the employer be directed to withdraw the change and restore the cut in the wages. If, on the other hand, this matter of reduction in wages is an industrial matter specified in Schedule II, then the question of the change in the form of reduction in wages being declared illegal by an application u/s 61 of the Act cannot arise and the only remedy available to the Petitioners is by an application to the Labour Court for restoration of the reduction in the wages after complying with the requirements of the proviso to Sub-section (3) of Section 31. It is common ground that Sub-section (2) of Section 31 has no applicability here.

7. The Petitioners'' contention is that "wages including the period and mode of payment" is an item specified in Schedule 1 (item No. 9 of Schedule I); and that, therefore, a reduction in the wages of an employee would be an industrial matter falling under Schedule I and as their wages were reduced by the employer

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without following the procedure laid down in Sub-section (l) of Section 31, the reduction in their wages was an illegal change within the meaning of Section 34 for the redress of which they were entitled to approach the Labour Court u/s 61 of the Act. On the other hand, it is contended on behalf of the employer, that is the Respondent No. 3, that item No. 9 of Schedule I o(sic) wages of employees as a class and does not cover wages of an individual employee; that the question of the reduction in the Petitioners'' wages falls under item No. 6 of Schedule II, namely, "employment including-(i) reinstatement and recruitment; (ii) unemployment of persons previously employed in the industry concerned"; and that, therefore if the Petitioners were in any way aggrieved by the reduction effected in their wages, they should have approached the Labour Court after making an approach as contemplated by the proviso to Sub-section (3) of Section 31 and as there was no such approach, the Labour Court had no jurisdiction to entertain their applications.

8. In our view, the Industrial Court was right in dismissing the Petitioners'' applications on the ground that the Labour Court had no jurisdiction to entertain them inasmuch as the Petitioners had filed them without first approaching the employer as requited by the proviso to Section 31(3) While considering the provisions of the Industrial Relations Act, 1960, one cannot overlook the underlying principle of the Act which is collective bargaining. The Act recognizes the fact that labour is organized in most industries and if labour is organised in any industry, then its union is the most appropriate body to act and appear for labour in its representative capacity, and proceeds on the basis that redress of grievances should not be individual but should be collective. The provisions of Section 31 have been enacted on this basic principle. The schemes of the three Sub-sections of Section 31 are different. The first Sub-section deals with the making of any change by an employer in respect of any industrial matter specified in Schedule I. If an employer intends to effect any change in such an industrial matter, he is required to give notice of his intention in the prescribed form and manner to the representative of employees and to such other persons as may be prescribed. Rule 31 of the M. P. Industrial Relations Rules, 1961, prescribes the form and manner in which notice to the representative of employees should be given and also says that the employer shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned in the local area, the Registrar and the Labour Officer of the industry for the local area concerned. It will be noted that in regard to matters with which Sub-section (1) of Section 31 is concerned, an individual employee does not come into the picture at all. The reason is that the matter which have been enumerated in Schedule I are all those which effect the employees as a class. A glance at the items specified in Schedule I is sufficient to show that Schedule I enumerates the industrial matters in which the employees as a class are interested. Item No. 9, when it speaks of "wages including the period and mode of payment" refers to wage-scale of labourers as a class and not to wages of an individual employee. That the industrial matters specified in Schedule I are of general interest to all

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the employees and not of a particular interest to an individual employee becomes clear from the fact that, as provided by Sub-section (1) of Section 31, notice of a change in an industrial matter mentioned in Schedule 1 has to be given to the representative of employees and not to any particular employee. Section 2 (27) defines "representative of employees" as meaning "a representative of employees entitled to appear or act as such u/s 27", and Section 27 lays down the priority in which the representatives of employees are entitled to appear or act, the first preference being given to a Representative Union. Section 26 also emphasizes the fact that except when permitted an individual employee cannot appear in proceedings before a conciliator, an arbitrator, a Labour Court, the Industrial Court or a Board. It says that save as provided in Section 28 no employee shall be allowed to appear or act in any proceeding under the Act except through the representative of the employees. Section 28 provides that a conciliator, an arbitrator, a Labour Court, the Industrial Court, or a Board may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it. It is thus clear that the Act attaches considerable importance to the appearance of, and the view presented by, a Representative Union and regards that the point of view of an individual employee can be presented through the representative of the employees.

9. That Section 31(1) deals with the change in an industrial matter affecting employees as a class becomes further clear by a reference to Sections 32 and 33 and Sections 39 to 46 of the Act. Section 32 lays down that where an employer or a representative of employees gives a notice of a proposed change under Sub-section (1) or Sub-section (2), then, if in the opinion of the Government, such a change affects the majority of employees or employers engaged in an industry in any local area, the Government may, by notification, declare that the whole of such industry is affected by such change and thereupon it shall be deemed to be so affected. The object of Section 32 is clearly to widen the scope of a change intended under Sub-section (1) or Sub-section (2) and make it one as affecting not only the employees or the employer in the particular industry in which the change is intended but also as affecting the majority of employees or employers engaged in the industry in any local area. Again, a change proposed under Sub-section (1) or Sub-section (2) is settled either by an agreement registered u/s 33, or by a settlement arrived at in conciliation proceedings regulated by the provisions contained in Sections 39 to 43 of the Act, or by an award of an arbitrator. In respect of an industrial matter where a notice of change has been given u/s 31(1) or 31 (2), the matter is also determined, if there is no agreement, settlement or award, by the issue of a notification by the Government u/s 43(5) that no settlement has been arrived at in the dispute. All these provisions point to the fact that Section 31(1)is concerned with a change in an industrial matter which affects the employees as a class. Likewise, Section 31(2) is also concerned with industrial matters affecting employees as a class.

10. If, as we think, Section 31(1) deals with a change in an industrial matter

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affecting employees as a class and item No. 9 of Schedule I does not cover the grievance of an individual employee about his wages, then clearly if the employer reduced the Petitioners'' wages without following the procedure laid down in Section 31(1), it cannot be held that the change in the form of reduction in the Petitioners'' wages amounted to an illegal change within the meaning of Section 34 of the Act. The Petitioners'' applications u/s 6! of the Act for a declaration of that change to be illegal and for a withdrawal of that change were, therefore, altogether misconceived.

11. The matters which are of particular interest to individual employees are enumerated in Schedule II, and if a change in respect of any such matter is desired by an employee, then he can approach the Labour Court for that purpose after complying with the requirements of the proviso to Section 31(3). Item No. 6 of Schedule II refers to "Employment including- (i) reinstatement and recruitment; (ii) unemployment of persons previously employed in the industry concerned". The term "employment" as used in item No. 6 in Schedule If is wide enough to include any matter relating to wages of an individual employee. It is not confined only to matters relating to bare state of employment. Section 31 (3) no doubt gives to a representative of employees also the right to move the Labour Court for a change, in respect of an industrial matter specified in Schedule If. But there may be cases in which the representative may not be sufficiently interested to ventilate the grievance of an individual employee, and, there fore, the Legislature has expressly conferred a right upon the employee who has a grievance in regard to matters contained in Schedule II to move the Labour Court for redress. The matter of reduction in the Petitioners'' wages clearly fell under item No. 6 of Schedule II, That being so they could move the Labour Court for a change in respect of that matter only after approaching the employer with a request for a change in accordance with the proviso to Section 31(3). In the present case, as admittedly no such approach was made, the Labour Court had no jurisdiction to entertain the Petitioners'' applications. The proviso to Section 31(3) distinctly says that no such application shall lie unless the employee has in the prescribed manner approached the employer with a request for a change and no agreement has been arrived at in respect of the change within the prescribed period. In our opinion, the Industrial Court was right in dismissing the Petitioners'' applications.

12. The view taken by us as regards the scope and effect of the three Sub-sections of Section 31 finds support in the observations of the Bombay High Court in Usman Habib Vs. State of Bombay and Others, and Gambhirji Odharaj Vs. Bind Basni Prasad, explaining the purpose and schemes of Sections 42(2) and 42(4) of the Bombay Industrial Relasions Act, 1946 (11 of 1947), which are somewhat analogous to Sections 31(2) and 31(3) of the M.P. Industrial Relations Act, 1960.

13. For all these reasons, this petition is dismissed with costs. Counsel''s fee is fixed at Rs. 100. The outstanding amount of the security deposit after deduction

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of costs shall be refunded to the Petitioners.

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