
(1954) 04 CAL CK 0007
In the Calcutta High Court
Case No : Civil Rule No. 3545 of 1953

Sisir Kumar Laha

APPELLANT

Vs

J.N. Majumdar and Others

RESPONDENT

Date of Decision : 30-04-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1955 Cal 309

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Phanindra Kumar Sanyal, for the Appellant; Snehansu Acharjya and Amar Nath Banerjee for Nos. 4, 12 and 16 and Purnendu Narayan Biswas, for No. 17, for the Respondent

Judgement

Sinha, J.—The petitioner is an employee of the opposite party No. 17, The Bank of India Limited. What had happened is this: The Bank had certain disputes with its workmen and the result was that certain workmen, namely, the opposite parties Nos. 4 to 15 and one Ram Bhadra Misra were dismissed from service on or about 27-12-1951. These 13 dismissed employees objected to their dismissal and on 22-7-1952 an order was made referring the dispute for adjudication to the Industrial Tribunal at Calcutta constituted u/s 7, Industrial Disputes Act 1947. The dispute was as follows:

"Whether the termination of the services of the undermentioned persons from the Calcutta Branch of the Bank was justified and, if not, what relief should be granted to them."

Then follows the names of the 13 dismissed employees. It appears that the petitioner here was taken in to fill the vacancy caused by the dismissal of these workmen. He was taken in, on or about 2-1-1952. It is clear therefore that when the dispute which was subsequently referred to for adjudication arose, the petitioner was not employed by the Bank at all. He came in afterwards. He is not

one of the persons whose services were ever terminated and his name is not in the schedule annexed to the order dated 22-7-1952. With regard to the dispute which was referred to adjudication, the Tribunal made an award on or about 9-3-1953. It did not allow reinstatement - but directed that compensation should be paid at the rate of 6 months' basic salary plus allowances, except to the opposite party No. 11 who was to get three months' basic salary plus allowances.

It appears that opposite parties Nos. 4 to 16 filed an appeal against the said award before the Labour Appellate Tribunal, the appeal being registered as "Calcutta 32 pf 1953." On 15-9-1953, the appeal was allowed and the Labour Appellate Tribunal directed that the opposite parties Nos. 4 to 15 were to be reinstated. The petitioner was not made a party either to the dispute which was referred to adjudication, nor was he made a party to the appeal.

2. In the present application what is said is that the petitioner should have been made a party to the appeal and that a writ in the nature of certiorari should be issued quashing the order dated 15-9-1953, and all proceedings relating thereto. The petitioner has also prayed for a writ in the nature of Prohibition prohibiting the respondents from giving effect to the said decision and also a Writ in the nature of Mandamus directing the opposite parties Nos. 1 to 3 to cancel or vacate the said decision.

3. In my opinion, this is a misconceived application. The petitioner is not a party to the trade dispute which has been referred. The dispute which has been referred relates to the dismissal of 13 employees in order to find out as to whether their dismissal was justified and, if not, what was to be done about it. At the time the dispute arose, the petitioner was not in the service of the Bank at all. How therefore he could be made a party in the proceeding before the Tribunal which adjudicated the dispute or before the Appellate Tribunal which considered the appeal, I cannot see.

Mr. Sanyal appearing on behalf of the petitioner next says that the order of reference decides that there existed an industrial dispute between the Bank and its workmen. He therefore argues that the dispute was a collective dispute and must be taken to be a dispute between the Bank and all its workmen including the petitioner. He says that if the reinstatement order of the Appellate Tribunal is given effect to, the petitioner will be affected and therefore he should have been made a party to the appeal.

Firstly, I am unable to agree with this argument in so far as it seeks to characterise the industrial dispute referred to as one between the Bank and all its workmen. The order of reference clearly states that it was a dispute between the Bank and its workmen in respect of the matter specified in the schedule thereto annexed. The schedule clearly shows that the dispute was with regard to the termination of services of 13 specified employees. Mr. Sanyal next argues that an industrial dispute cannot arise between an individual workman and the employer. He says that unless all the workmen raise the dispute, it cannot be called an

industrial dispute.

He concedes that if an union of workers took up the cause of an individual worker, it might develop into an industrial dispute but until that is done a dispute raised by an individual workman cannot be called an industrial dispute and therefore the proceedings in respect thereof under the Industrial Disputes Act are wholly without jurisdiction. Whether a dispute between an employer and an individual workman can be called an industrial dispute is a matter of some difficulty. My attention has been drawn to several decisions to which I shall now refer.

4. In the case of "J. In the matter of J. Chowdhury Vs. M. C. Banerjee and anr, (A), a lino operator was dismissed by the editor of the Calcutta Weekly Notes whereupon the dismissed employee moved under the Industrial Disputes Act and initiated conciliatory proceedings thereunder. The editor of the Calcutta Weekly Notes took objection to the validity of the proceedings and made an application" to this Court.

Mitter J., held that upon a true construction of Section 2(k) of the Industrial Disputes Act, a dispute which is between the employer on the one side and an individual employee on the other cannot come within the definition of an industrial dispute. He however held that a dispute which in its origin was between the employer and an individual employee might develop into an industrial dispute if the rest of the employees or the majority of them take up the cause of the employee concerned. The learned Judge followed the decision of the Madras High Court in the case of -- The Kandan Textile Ltd. Vs. The Industrial Tribunal (1) and Others, .

This case was followed by Bose, J., in -- Bilash Chandra Mitra Vs. Balmer Lawrie and Co. Ltd., . The learned Judge accepted the position that an individual dispute, that is a dispute between a single workman and his employer is not an industrial dispute. The learned Judge pointed out that according to the definition in Section 2(k) the word used was "workmen" and not in the singular, He pointed out however that the case before him was not of a dispute between a single individual and the company but a dispute of two employees represented by the Union and taken up by the Union.

5. Mr. Sanyal argues that once the Union takes up the cause of an individual employee the matter is on a different footing. He refers to the decision of the Supreme Court in the case of -- D.N. Banerji Vs. P.R. Mukherjee and Others, . Chandrasekhara Aiyar J., said as follows:

"The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests -- such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we

would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful.

But at the same time, having regard to the modern conditions of society where capital and labour have organised "themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into a industrial dispute, when as often happens, it is taken up* by the trade union of which he is a member and there is a concerted demand by the employees for redress,"

Mr. Sanyal has also drawn my attention to the case of -- "Birla Brothers Ltd. v. Modak", ILR (1948) 2 Cal 209 . In that case the dispute is referred to in general terms as an industrial dispute which had arisen between Messrs. Birla Brothers Ltd. and their employees as represented by the Birla Brothers Employees Union. This was held to be a valid reference.

6. In my opinion, the last mentioned case does not throw much light on the matter, because although the dispute initially arose out of the discharge of four employees, it gave rise to a charter of demands on behalf of the Union of workers demanding not only the reinstatement of the dismissed employees but also drastic changes in the terms of service and remuneration of all the members of the Union. There can be no doubt that under such circumstances there was a dispute in its widest sense. The only point for consideration there was as to whether the union properly represented the workmen and as to whether the terms of reference was sufficiently specific.

7. Mr. Acharjya on the other hand has drawn my attention to an English decision of the Kings Bench Division presided over by Chief Justice Goddard -- "R. v. National Arbitration Tribunal; Ex parte, South Shields Corporation", 1951 2 All ER 828 (F), in which, upon an interpretation of Article 7 of the "Conditions of Employment and National Arbitration Order 1940", it was held by Lord Goddard that a dispute of difference between employer and workmen included a dispute between one employer and one workman. The matter seems to have been exhaustively dealt with in a case decided by the Labour Appellate Tribunal in "Swadeshi Cotton Mills Co. Ltd. v. Sri Ram Asray", 1953 LAC 137 (Cal) (FB) (G). In this case a Full Bench consisting of five members of the Appellate Tribunal dealt with exhaustively all the cases and came to the conclusion that a dispute raised by workmen individually comes within the language of the definition of industrial dispute in Section 2(k), Industrial Disputes Act, 1947.

8. I think it is not necessary to decide in this case as to whether a dispute raised by one single workman comes within the definition of an industrial dispute u/s 2(k), Industrial Disputes Act But I have no hesitation in holding that a dispute raised by a number of workmen certainly comes Within that definition. With great respect, I am unable to agree to the proposition that such a dispute must

be raised by a majority of workmen. The Supreme Court has pointed out that a dispute raised by a single workman might, if taken up by the Union, develop into an industrial dispute. In the present case, I find that the Union has taken up the case of the dismissed employees. It appeared both before the original Tribunal and before the Appellate Tribunal supporting the case of the dismissed employees.

Mr. Sanyal however argues that the order of reference shows that the union had nothing to do with the dispute. In my opinion, that ought not to make any difference. If the union takes up the cause of the dismissed employees from the very start and initiated proceedings under the Industrial Disputes Act, that would be one way of pressing the objection of the workmen. I do not see what difference it makes if the workmen themselves initiated proceedings which is later on taken up by the union on their behalf. The very fact that the union has taken up the case of a large number of dismissed employees shows interest of the workmen at large in the dispute which has arisen.

9. Therefore on the facts of this particular case I am unable to come to the conclusion that the dispute referred to was not an industrial dispute and that the proceedings were incompetent.

10. As I have already pointed out, the petitioner was not in the picture at all when the dispute arose and the dispute that has been referred to cannot possibly refer to him. Consequently I do not see how he can question the results of the proceedings and ask that the order of the Appellate Tribunal should be quashed and/or set aside. In my opinion, the petitioner has no locus standi whatever to make this application. If it is his case that the result of the proceedings might affect his interest and therefore he should have been granted an opportunity of taking a part in the proceedings, he might have attempted to be made a party to the proceedings, although I have grave doubts whether it would have been at all permissible to allow him to come in.

He has however taken no steps whatsoever to take any part in the proceedings until it has terminated. Even now the petitioner is not challenging the findings of the original Tribunal just because it suits his interest. Mr. Acharjya has also pointed out that the reinstatement of the dismissed employees need not necessarily affect the petitioner because there is nothing to show that the Bank would necessarily terminate the service of the petitioner if there is reinstatement of the dismissed employees. The Bank might choose to retain surplus employees and therefore it cannot be said that the interest of the petitioner has been affected in any manner which will entitle him to come as of right and participate in the proceedings mentioned above.

11. For all these reasons. I think that this application is misconceived and must fail.

12. The Rule is discharged. The petitioner must pay the costs of this application. Hearing; fee is assessed at two gold mohurs.