
(1956) 05 PAT CK 0006

In the Patna High Court

Case No : Supreme Court Appeal No's. 36, 37 and 41 of 1956

State of Bihar and Another

APPELLANT

Vs

D.N. Ganguly and Others

RESPONDENT

Date of Decision : 08-05-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110
Constitution of India, 1950 — Article 133, 133(1), 226

Citation : AIR 1958 Patna 26 : (1957) 2 LLJ 517

Hon'ble Judges : Ramaswami, C.J; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Additional Standing Counsel in Nos. 36 and 37 and T.K. Prasad, in No. 41, for the Appellant; B.C. Ghosh, R. Roy, T.K. Das, A.C. Mitra, Srideo Misra, K.D. Chatterjee, Chuni Lal and Uday Sinha, (in Nos. 36 and 37), B.C. Ghosh, R. Roy, T.K. Das, A.C. Mitra, Srideo Misra, K.D. Chatterji, Chuni Lal and Uday Sinha and A.G. (in No. 41), for the Respondent

Final Decision : Dismissed

Judgement

1. In S. C. A. Nos. 36 and 37 of 1956, the State of Bihar has made an application for leave to appeal to the Supreme Court from a judgment of a Division Bench of this High Court pronounced on the 4th April, 1956, in M. J. C. Nos. 546 and 590 of 1955. It was argued by the Advocate General on behalf of the State of Bihar that leave should be granted under Article 133(1)(c) of the Constitution as the judgment of the High Court involved a matter of Public importance, namely, the interpretation of Section 10 of the Industrial Disputes Act with regard to the power of the State Government to cancel a notification referring industrial disputes to a tribunal in the circumstances mentioned in that section.

The Advocate General conceded that the case is not governed by Article 132 of the Constitution and there was no question of law raised in the case as to the interpretation of the Constitution. Having heard Counsel for the respondents we are satisfied that this case is not a fit one for appeal to the Supreme Court within the meaning of Article 133(1)(c) of the Constitution.

2. In S. C. A. 41 of 1956, the petitioner is Bata Mazdoor Union which is represented by Mr. T. K. Prasad. In this case also it is prayed that leave may be granted for appeal to the Supreme Court against the judgment of the High Court dated the 4th of April, 1956, in M. J. C. Nos. 546 and 590 of 1955. The contention of the learned counsel is that the petitioner is entitled as a matter of right to a certificate under Article 133(1)(b) of the Constitution.

It was submitted on behalf of the petitioner that the judgment of the High Court involved directly or indirectly the question of reinstatement of about fifty-nine workers of the Bata Shoe Company Limited. It was submitted by the learned Counsel that the monthly pay of these dismissed workers would be about Rs. 4,200 and there might be a claim for compensation of about Rs. 17,000 in case the tribunal decided the question referred by the State Government in favour of the respondents, namely, Mr. D. N. Ganguly and the other dismissed workers. The argument was hence put forward that the valuation of the dispute would be more than Rs. 20,000/-.

In paragraph 19 of his application the petitioner has stated that "the case involves the dismissal and reinstatement of about 60 persons as well as prejudice to other workmen and, therefore, directly or indirectly involves matters which if assessed will be more than Rs. 20,000 in value". There is a counter-affidavit on behalf of the respondents challenging the statement made by the petitioner in his affidavit. In paragraph 14 of the counter-affidavit the respondents have made this challenge.

In our opinion, it is not necessary for the purposes of this case to investigate the question of valuation and to decide which of the two contrary statements is correct. We shall assume in favour of the petitioner that the case involves the dismissal of about fifty nine workers and it also involves a monthly claim of more than Rs. 20,000 in value. Even so, we are satisfied that the case does not come within the purview of Article 133(1)(b) of the Constitution.

For the purpose of the application of that Article the judgment of the High Court must involve directly or indirectly "some claim or question respecting property of the like amount or value". In the present case the claim of the respondents before the tribunal was a claim for reinstatement in service with or without compensation for the days they were out of employment. It is difficult to hold that this kind of claim is one respecting "property".

On the contrary, we are of opinion that the claim or question at issue between the parties before the tribunal was a claim regarding reinstatement in the Company's service and it is farfetched to say that the question at issue between the parties was a question respecting property. In support of our view reference may be made to two authorities -- Maharaja Kesho Prasad Singh Vs. Shiva Saran Lal, and AIR 1925 150 (Privy Council) .

We do not, therefore, consider that Article 133(1)(b) of the Constitution applies in this case and the petitioner is not entitled as a matter of right to get a

certificate under the provisions of this Article of the Constitution.

3. In the course of argument there was some discussion as to the question whether a proceeding under Article 226 of the Constitution is a "civil proceeding", and whether the order passed in that proceeding is a "final order" within the meaning of Article 133(1) of the Constitution. It was contended by Mr. T. K. Prasad on behalf of the petitioner in S. C. A. 41 of 1956 that a proceeding under Article 226 of the Constitution is -in the nature of a civil proceeding and the order passed by the High Court in this case is a final order. In support of this proposition counsel referred to *Gopesh-war Prasad v. State of Bihar*, AIR 1951 Pat 626 (C). It is true that the decision of that case supports the view for which learned counsel for the petitioner contends, but with great respect to the learned Judges who decided that case, we doubt whether the view taken by them is the correct view.

We are inclined to think on the contrary that a proceeding under Article 226 of the Constitution is not a Civil proceeding within the meaning of Article 133(1) of the Constitution and the order passed by the High Court in such a proceeding is not a final order as contemplated by Article 133(1) of the Constitution. The reasons in support of this view have been very well put by a Division Bench of the Nagpur High Court in AIR 1955 257 (Nagpur) .

But we do not consider it necessary to finally decide this point in the present case because of the reasons we have already given. The application must fail on the ground that the judgment of the High Court does not involve directly or indirectly any claim or question respecting property of over Rs. 20,000 and so the case does not fall within the ambit of Article 133(1)(b) of the Constitution. We have also said that the question raised in the case is not a question of sufficient public or private importance and the provisions of Article 133(1)(c) of the Constitution are also not attracted.

4. Accordingly we do not think that there is any justification for granting leave to the petitioners in S. C. A. Nos. 36, 37 and 41 of 1956 to appeal to the Supreme Court, and we dismiss these applications with costs : hearing fee Rs. 100/-. Costs will be paid by the State of Bihar and Bata Mazdoor Union in equal shares, and the costs will be disbursed equally to Mr. B. C. Ghosh, who appears on behalf of fifty-nine employees and to the counsel appearing for the Bata Shoe Company, Limited.