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**(1970) 05 CAL CK 0033**  
**In the Calcutta High Court**  
**Case No : Civil Revn. No. 471 of 1969**

Surendra Mohan Mitra and Others

APPELLANT

Vs

Republic Engineering Corporation Ltd.

RESPONDENT

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**Date of Decision :** 12-05-1970

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 2A

**Citation :** AIR 1970 Cal 482 : 74 CWN 744

**Hon'ble Judges :** A.K. Mookerji, J

**Bench :** Single Bench

**Advocate :** Arun Prokash Chatterjee and Parimal Kumar Das Gupta, for the Appellant; Satyendra Nath De, for the Respondent

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## Judgement

A.K. Mookerji, J.—This rule was obtained by workmen on an application under Article 227 of the Constitution and it is directed against an award of the Third Industrial Tribunal, Calcutta.

2. The petitioners were workmen under the Opposite Party, M/s. Republic Engineering Corporation Limited. The workshop of the Company was within the jurisdiction of Behala Police Station. The petitioners were arrested on July 18, 1964 by the police under the Defence of India Rules. On the next day, however, they came out on bail, on condition, that they would not enter into any part of the area within the jurisdiction of Behala Police Station. On 17th of February, 1964, the petitioners were charge-sheeted by the management on the ground that they were absenting themselves from work. There was a domestic enquiry against the petitioners and ultimately they were dismissed from the service with effect from the 16th June, 1964. A written demand for reinstatement was made on the 17th June, 1966 to the management against illegal dismissal of the petitioners. But it was without any result Subsequently, on the 5th November, 1966, a conciliation proceeding was started at the instance of the Labour Department, Government of West Bengal. Unfortunately the (sic) failed By an order dated the 10th April, 1967, the appropriate Government referred the

matter to the First Industrial Tribunal for adjudication u/s 10 read with Section 2A of the Industrial Disputes Act, 19-17 (hereinafter referred to as the Act). The : matter was thereafter transferred to the Third Industrial Tribunal by an order of the Government of West Bengal, Labour Department dated the 10th July, 1967, for adjudication.

3. oH the 18th September, 1968 the case was taken up tor hearing by the Third Industrial Tribunal. One of the petitioners was examined. Some documents also were produced and exhibited. The hearing of the case was adjourned till the 10th of December, 1968. On the 9th of December, 1908 the opposite party company filed a petition challenging the jurisdiction of the Tribunal. The said petition was heard on the 10th of December, 1968. The Tribunal held that it had no jurisdiction to adjudicate the matter because the dispute was not an "industrial dispute" as Section 2A of the Act has got no retrospective operation and passed an award accordingly. The petitioners being aggrieved, moved this Court against the said award and obtained the present rule.

4. Mr. Chatterjee, appearing for the petitioners in support of the rule, made a twofold submission. In the first place he contended that the learned Judge of the Tribunal was in error in holding that the provisions of Section 2A of the Industrial Disputes Act 1947 as amended by Act 35. of 1965, would not be applicable to the instant case and the dispute under reference was not an industrial dispute. In the present case, although the workmen were dismissed on the 17th of February 1964, prior to the date when Section 2A came into force but the said dismissal continued to exist on December 1, 1965, when Section 2A became the law. By virtue of the provisions of that section the "individual dispute" became an industrial dispute. According to Mr. Chatterjee, Section 2A clearly applies to the petitioners" case and the question of giving any retrospective effect to that section does not arise. In support of his contentions Mr. Chatterjee referred to a Bench decision of this Court: Birla Brothers Ltd. v. Modak, reported in ILR (1948) Cal 209 and a single Bench decision of the. Delhi High Court: Kaul S. N. v. National Productivity Council, New Delhi, reported in (1968) 2 Lab LJ 85 (Delhi).

5. Mr. Chatterjee next contended that the crucial date for the purpose of determining the jurisdiction of the Tribunal would be the date when the Tribunal receives an order of the appropriate Government u/s 10 of the Act. In the present case the appropriate Government made the reference on the 10th of April, 1967 when the "individual dispute" of the petitioners was deemed to be an industrial dispute so the reference was perfectly valid in law and accordingly the Tribunal had jurisdiction to entertain and determine the reference.

6. The applicability of the industrial Disputes Act to an individual dispute" was excluded, unless the workmen as a body or a considerable section of them made any cause with the individual workman. That was the law as declared by the Supreme Court in Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others, . prior to introduction of Section 2A to the Act. By Industrial Disputes (Amendment) Act of 1965 (Art 85 of 1965), the new Section 2A has

been brought in. The said section reads as follows:

"Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor an union of workmen is a party to the dispute."

7. The Amendment Act of 1965 received the assent of the President on the 19th of November, 1965. It was published in November 1965, for general information and came into force by the Central Government notification dated the 27th November, 1965, with effect from the 1st Day of December, 1965. From the language of the said section there cannot be any doubt that Section 2A is prospective and not retrospective. Mr. Chatterjee also did not contend that Section 2A was retrospective.

8. Mr. De, appearing on behalf of the company, submitted that Section 2A is not retrospective and in support of his contention he referred to an unreported Bench decision of this Court in Appeal No. 3 of 1969 (Cal), *Air France v. Miss K. Kotval*, decided on May 20, 1969 and a single Bench decision of the Punjab and Haryana High Court -- *Shrigopal Paper Mills v. State of Haryana*, reported in (1968) Lab IC 1259 and lastly, a decision of the Industrial Tribunal -- *L.C. Sett and Co., (P) Ltd. v. Their Workman, Sukhendra Nath Banerjee*, reported in (1968) 16 Fac LR 285.

9. As none of the parties contends that Section 2A is retrospective, it is not necessary for me to refer to these decisions and to deal with this point in detail any further.

10. The real point for consideration in the instant case is whether Section 2A would be applicable to the petitioners' dispute without giving any retrospective effect to that section.

11. In ILR (1948) Cal 209 four employees were dismissed by the Company in 1946. On April 1, 1947 the Industrial Disputes Act came into force. On May 14, 1947, Government of Bengal made a reference to the Tribunal for adjudication. It was contended on behalf of the company that the dispute was originated before the Act came into force and if the Act was applied in the present dispute, it would amount to giving retrospective effect to the Act. Harris, C. J., repelled that contention and observed at page 221 as follows :--

"In my judgment, the Act of 1947 clearly applies to the present dispute without any question arising out of giving the Act any retrospective effect. It is true, the dispute arose before the Act was passed, but on April 1, 1947, when the Act came into force, the dispute was in existence and continuing. The employees were on strike and the strike actually continued until May 19, that is, five days after the Government made the order referring the dispute to arbitration. In my

judgment, the Act must apply to any dispute existing after it came into force, no matter when that dispute commenced. There is nothing in the Act to suggest that it should apply only to disputes which originated after the passing of the Act. On the contrary, the opening words of Section 10 of the Act make it clear that the Act would apply to all disputes existing when it came into force. The opening words of Section 10(1) are :--

"If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing etc."

It seems to me that these words make it abundantly clear that the Act applies to any industrial dispute existing when it came into force and, therefore, the Act applies to this dispute".

11-A. The principle as laid down by this Court in Birla Bros. case ILR (1948) Cal 209 was approved by the Supreme Court in Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd., .

12. In (1968) 2 Lab LJ 85 (Punj) workmen's services were terminated on March 9, 1964. The Delhi Administration on June 8, 1966 referred the "individual dispute" of the workmen to the Labour Court for adjudication u/s 10 read with Section 2A of the Act. A preliminary objection was raised before the Labour Tribunal that Section 2A has got no retrospective effect. The tribunal upheld the objection and passed an award holding that it had no jurisdiction to adjudicate upon. The workmen moved the Delhi High Court on an application under Article 226 of the Constitution. Tatachari, J., following the decision of this Court in ILR (1948) Cal 209 held, that, when a discharge or dismissal or retrenchment or termination of service took place prior to the date on which Section 2-A of the Industrial Disputes Act (as amended by Act 35 of 1965) came into force and continued to exist on the day that section became a part of the statute and thereafter, it would fall within the provisions of Section 2A of the Act. The workmen's writ petition was allowed and the Labour Court was directed to proceed.

13. The above decisions have clearly established the principles that a dispute which originated before an Act came into force but was in existence when the Act became law, the provisions of the Act would apply to the dispute since it was in existence and continued on that date and no question of giving any retrospective effect to the Act does arise.

14. I respectfully agree with the above views and hold that the provisions of Section 2A of the Act are applicable to the instant case, without giving any retrospective effect to that section, as the dispute was in existence and continued on the 1st of December, 1965, when the said Section 2A came into force.

15. Mr. De, appearing on behalf of the company, however, submitted, that the dispute was not in existence and continued when Section 2A came into force so

the principle as laid down in Birla Brothers" case, ILR (1948) 2 Cal 209 would not be applicable to the instant case. I am unable to accept this contention. In 1964 when the petitioners were dismissed, the dispute was originated, and it continued till 1st of December, 1965, when Section 2A came into force. Before 1st of December, 1965, the petitioners had no remedy, as such there was no occasion to raise any dispute. Since 1964 the "individual dispute" was there and on 1-12-1965 that "individual dispute" was converted into an "industrial dispute" by virtue of Section 2A of the Act. There is no period of limitation prescribed in the Act for making a reference u/s 10. A reference can be made at any time. It has also been held by the Supreme Court in Inder Singh v. Workmen reported in (1961) 2 Lab LJ 89 (SC) that laws of limitation which might bar any civil Court from giving a remedy in respect of lawful rights are not and should not be applied to Industrial Tribunal. In the instant case, the reference was made on the 10th of July, 1967, by the appropriate Government to the Industrial Tribunal, when Section 2A of the Act was in operation and became a part of the Statute. So, in my judgment, reference made by the appropriate Government in the instant case was perfectly valid and legal.

16. Lastly, Mr. De contended that as no dispute was raised by the workmen with the management, the reference was bad and in this connection he referred to a decision of the Supreme Court, S. R. Corporation v. Industrial Tribunal, Gujarat, reported in AIR 1988 SC 529 . In that case the Supreme Court held that if no dispute at all was raised by the employee with the management, any request sent by the management to the Government by way of demand cannot be an industrial dispute between the employer and the employee. I do not find any relevancy of referring this decision in the instant case. A dispute was raised in the present case, by thp workmen with the management on the 16th of June, 1968. Thereafter there was a conciliation; when the conciliation failed, the appropriate Government referred the matter to the Tribunal for adjudication. So the facts and circumstances in the present case are quite different from that of the Supreme Court case referred to by Mr. De.

17. In the result, -this rule is made absolute with cost. The impugned award of the Third Industrial Tribunal dated the 21st December, 1968, is set aside. The case is remitted to the learned Judge of the Third Industrial Tribunal for fresh adjudication in accordance with law. The hearing fee is assessed at 3 Gold Mohurs.