

(1943) 04 BOM CK 0005
In the Bombay High Court
Case No : O.C.J. Appeal No. 1 of 1943

The Khatau Makanji Spinning and Weaving Co. Ltd.

APPELLANT

Vs

S.R. Deshpande

RESPONDENT

Date of Decision : 14-04-1943

Acts Referred:

Bombay Industrial Disputes Act, 1938 — Section 28(2), 62

Citation : AIR 1943 Bom 332 : (1943) 45 BOMLR 657

Hon'ble Judges : Kania, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, C.J.—This is an appeal against a decision of Mr, Justice Chagla. The petitioners, who are a mill company carrying on business in Bombay, applied for an order against the respondent, who is a conciliator appointed under the Bombay Industrial Disputes Act, 1938, to restrain him from proceeding with conciliation proceedings under the Act. The application is based alternatively on Section 45 of the Specific Relief Act, 1877, or on the alleged right of the petitioners to a writ of certiorari.

2. Before stating the facts, it will, I think, be desirable to refer to the Bombay Industrial Disputes Act, in order to appreciate the motives for the various acts of the parties. The preamble of the Act states that it is expedient to make provision for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other matters. Section 26 of the Act provides for the settlement of standing orders to regulate the relations between the employer and the employee in particular cases, and admittedly standing orders have been prepared in accordance with the Act which regulate the relations of the petitioner-company with its employees. The relevant standing order in this case is standing order 19A, which provides that the employment of any permanent operative may be terminated by fourteen days" notice or by payment of thirteen days" wages in lieu of notice, and that the reasons for the

termination of service shall be recorded in writing and shall be communicated to the operative, if he so desires at the time of discharge, unless such communication, in the opinion of the Manager, may directly or indirectly lay the company and the manager or the person signing the communication open to criminal or civil proceedings at the instance of the operative. That exception seems rather to detract from the benefit of the privilege given to the workman, because presumably he would want to know the reasons of dismissal in order to found a claim for wrongful dismissal. However, that is what the standing order says. Then, to return to the Act, u/s 28(1) any employer intending to effect any change in any standing order settled u/s 26 or in respect of an industrial matter mentioned in Schedule II is required to give notice of such intention in the prescribed form to the representative of the employees, and then the further procedure is laid down. It is to be noticed that in Schedule II the various industrial matters in respect of which the employer can demand a change include dismissal of any employee except in accordance with law or as provided for in the standing orders framed u/s 26 of the Act, So that the employer cannot object in the matter of dismissal of an employee, if it is done under the standing orders. Then comes Section 28(2), which is the really material sub-section for the present purpose, and it provides that an employee desiring a change in any such standing order or in respect of any other industrial matter shall give notice in the form prescribed to the employer through the representative of the employees and the further procedure is there laid down. I will come back to that sub-section presently. Then Section 34 and the succeeding sections deal with conciliation proceedings. Section 34 provides that if any change in respect of which notice is given u/s 28 is objected to by the employer or the employee, as the case may be, the party who gave such notice or intimation shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the conciliator of the local area a full statement of the case in the prescribed form within the time limited. Section 35 deals with the commencement of conciliation proceedings, and Section 36 defines the duties of the conciliator, who has to endeavour to bring about a settlement of the industrial dispute, and for that purpose to inquire into the dispute and all matters affecting the merits thereof and he may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. Then Section 38 provides what is to happen if no settlement is arrived at. The conciliator has to make a report to the Chief Conciliator, who has to send the report on to the Local Government. Section 40 gives certain powers to the conciliator of summoning witnesses, and so forth. Then Section 62 shows what is the effect of these conciliation proceedings. It renders a strike illegal in the events specified. Shortly stated the effect of the section is that a strike is illegal if started before the standing orders have been settled, or if no notice is given u/s 28, or if the notice is given and the proceedings u/s 28 have not been completed, and where the proceedings have been completed a strike is illegal if it is commenced more than two months after the completion of such proceedings. The scheme of the Act seems to be that conciliation proceedings shall be taken with a view to avoid

strikes if possible.

3. Now, what happened in this case was, that the standing orders were duly passed, (as I have mentioned), and on November 7, 1941, a man named Kashinath, who was an operative employed by the petitioner-company, was dismissed under standing order 19A by paying thirteen days' wages in lieu of notice. On November 24 other operatives of the petitioner-company represented to the Labour Officer that they desired a change u/s 28(2) of the Act, and the Labour Officer duly wrote to the petitioner-company fixing a meeting to be held on December 19, 1941, for the purpose of election of representatives of the employees for the purpose of giving notice u/s 28(2), and a meeting was held, and on December 27 the representatives elected at the meeting gave notice to the petitioner-company under the provisions of Section 28(2) of the Act that they desired a change in accordance with the statement annexed to that notice. What the employees object to in their statement is the dismissal of Kashinath. They want him to be reinstated; they want his wages to be paid to him for a period from the date of his discharge to the date of his reinstatement, and they desire that there should be no break in his service caused by the discharge. In these circumstances the mill company apply to this Court to quash the conciliation proceedings.

4. Mr. Justice Chagla held, in the first instance, that this was not a matter which fell either within Section 45 of the Specific Relief Act or within the powers of this Court to grant a writ of certiorari, but he also expressed the opinion that on the merits the workmen were within their rights in requiring a change u/s 28(2). As that point has been argued first in this Court, I will deal with it first.

5. The contention of the petitioners is that on the construction which Mr. Justice Chagla has placed on Section 28(2) the whole scheme of the Industrial Disputes Act will really be defeated, since the standing orders as to dismissal will not be final. The position, no doubt, is that this workman Kashinath was dismissed in accordance with the terms of standing order 19A, and his fellow employees do not object to the terms of the standing order, but they do object to the dismissal of Kashinath. Their contention apparently is that he has in effect been victimised. Victimisation is made illegal u/s 64 of the Act, but it is of course, very difficult to prove victimisation of a particular employee. A man may have committed some fault, or his work may have been in the opinion of the employer unsatisfactory, but his fellow workmen may be of opinion that the real cause of his dismissal was not the fault he committed, or the unsatisfactory nature of his work, but the fact that he was a leader of the employees, and the employers wanted to get rid of him. The question is whether such a contention can be raised u/s 28(2). The words of that sub-section are very wide. They provide that an employee desiring a change in any such standing order, that is in a standing order framed under the Act, or in respect of any other industrial matter, shall give notice, etc. "Industrial matter" is defined in Section 3(14) as being any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or

the mode, terms and conditions of employment or non-employment and includes all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person. It is perfectly plain to my mind that the dismissal of a workman is an industrial matter, As I have noticed, Sub-section (1) of Section 28 gives the right of claiming a change to the employers in respect of an industrial matter which is mentioned in Schedule II, and Schedule II only covers dismissal of an employee otherwise than in accordance with law or as provided for in the standing orders framed u/s 26 of the Act. I agree with Mr. Justice Chagla that it is quite impossible to read into Sub-section (2) of Section 28 a reference to the second schedule so as to qualify the expression "other industrial matter." It seems tolerably plain that the omission in Section 28(2) of any reference to Sch, II was deliberate. Sir Jamshedji Kanga contends that we ought to read Sub-section (2) as referring to a change in any such standing order or in respect of any industrial matter not of a kind governed by the standing orders. But it is quite impossible to read the section in that way when the language is perfectly plain. An employee may desire a change in a standing order, or he may be satisfied with the standing orders but may desire a change in respect of any other industrial matter, and it is impossible to say that the other industrial matter must be of a kind dealt with by the standing orders. Sir Jamshedji Kanga contends that so wide an interpretation of the words of Section 28(2) as Mr. Justice Chagla has put upon them would seriously jeopardise the object of the Act, by destroying the finality of the standing orders. It is not our business to consider what the effect of the Court's order may be. If the language is sufficiently plain, we can only give effect to it. But I am not by any means satisfied that the construction which the learned Judge placed upon the words, and which I think is right is going to have the disastrous consequences which the employers anticipate. It does not follow that, because employees have power by way of conciliation proceeding to object to the dismissal of a fellow employee, they will exercise that power in the case of every dismissal. It is after all not a wholly unreasonable attitude for employees to say : "We have no objection to the standing orders. We admit the right of the employer to dismiss on fourteen days" notice or payment of thirteen days" wages in lieu of notice, but we say that in this particular case the power has been wrongly exercised, and we think that unless the employer resiles from the position he has taken up there is going to be trouble in the mill, and we would like this matter to be considered by a conciliator." If the conciliator agrees with their view, that may affect the attitude of the employer. On the other hand, if the conciliator does not agree with their view, they may be ready to modify such view. The scheme of the Act is that matters in dispute should be placed before a conciliator, so that Government may have an opportunity of considering his view and endeavouring to get the parties to come to a reasonable arrangement. If the construction urged by the employers is correct, one would get the position, that if the employees feel that they have a grievance, because a man is dismissed in circumstances which they think amount to victimisation, though they may be unable so to prove in a Court of law, they have got no remedy. I am by no means

satisfied that the consequences of adopting the employers' construction of Section 28(2) would be less disastrous than adopting the employees' construction. However, in my opinion, the language of the section is plain, and the action of the employees comes within it. Therefore, there is no case for ordering the respondent to desist from proceeding with his conciliation proceedings.

6. In that view of the matter it is not necessary to consider whether the petitioners can claim relief under the Specific Relief Act, or by the issue of a writ of certiorari.

7. The appeal must be dismissed with costs.

Kania, J.

8. The relevant facts and sections of the Industrial Disputes Act have been stated in extenso in the judgment just delivered. The short point for consideration is whether the dismissal of an employee can be called an industrial dispute, and, if so, whether a change in the order made by an employer falls u/s 28(2) of the said Act. While the rights of an employer to give notice to effect a change are limited to the purposes mentioned in Section 28(1), the express words of Section 28(2) show that so far as the employees are concerned there is a much wider scope for their demand. The first part of the sub-section entitles the employees to give notices when they desire a Change in any of the standing orders settled u/s 26. On turning to Schedule I it is clear that the standing orders are for defining the rights and obligations between the employers and the employees generally. The second part of that section runs; "or order in respect of any other...industrial matter." We have been asked by the learned counsel for the appellants to read those words to mean "in respect of any other industrial matter the subject matter of which is not covered by the standing orders." If one bears in mind that the standing orders are in respect of the general relations between the employers and the employees, a case of dismissal of an individual employee is outside the standing orders, although it is an industrial matter as defined by Section 3(14). If the construction sought to be put by the appellants is correct, there would be no object in including a dismissal of a person in the definition of "industrial matter" because, according to their contention, the standing orders cover the circumstances under which the employment can be terminated. On a plain reading of Section 28, Sub-section (2), it is clear that the employees are given a right to give notice when they desire a change in respect of any standing order, i.e. a change generally affecting all the employees as a class, and also when they desire a change in respect of any other industrial matter, which, in my opinion, would cover a case of the dismissal of an individual employee. Having regard to that plain meaning of Section 28(2), it appears to me that the appellants' case must fail.