
(1957) 08 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 102-D of 1956

The Punjab and Sind Bank Ltd.

APPELLANT

Vs

Rameshwar Dayal and Others

RESPONDENT

Date of Decision : 20-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Industrial Disputes Act, 1947 — Section 10(1), 2

Citation : AIR 1958 P&H 14 : (1958) 2 LLJ 107

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Advocate : R.S. Narula, for the Appellant; Jindra Lal, for the Respondent

Final Decision : Allowed

Judgement

Falshaw, J.—This is a petition under Article 226 of the Constitution by the Punjab and Sind Bank Limited challenging the reference by the Government to the Industrial Tribunal consisting of Mr. Rameshwar Dayal respondent No. 1 of an alleged dispute between the Bank and its workmen in the persons of Har-nam Singh, Harbhajan Singh and Prem Singh respondents Nos. 3, 4 and 5.

2. The case of the Bank is that Harnam Singh respondent No. 3 was dismissed for insubordination in connection with certain leave applications, after being heard in full in a regular enquiry by an officer appointed by the Bank for the purpose, and after his appeal had been dismissed by two other persons appointed by the Bank for the purpose of hearing it. This was in March 1955.

3. Harbhajan Singh and Prem Singh respondents wire a clerk and peon in the Qarol Bagh, New Delhi, Branch who were alleged by the Bank to have been guilty of misconduct in the form of destroying or removing from the Bank certain of the Bank's records. However, rather than take proceedings against them with a view to dismissing them for misconduct, the Bank preferred to act under Clause 522 of the so-called Sastry Award, under which, in cases not involving disciplinary

action for misconduct, the employment of a permanent employee could be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice. The services of these two employees were accordingly terminated on the 5th of July 1955 on payment of three months' pay in lieu of notice.

4. All three of them are said to have had recourse in the first place to conciliation under the provisions of the Industrial Disputes Act but as the Bank was unwilling to re-employ them, the Government, by an order dated the 9th of June 1956, expressed its opinion that an industrial dispute existed between the Bank and its workmen and that it was desirable to refer the dispute for adjudication and it was accordingly referred to Mr. Rameshwar Dayal as the sole member of the Tribunal. The dispute thus referred was described in the order as being "alleged wrongful termination of the services of Sarvshri Harbhajan Singh, Prem Singh and Harnam Singh and the relief, if any, to which they are entitled."

5. It is conceded that many of the grounds on which the jurisdiction of the Tribunal to deal with the so-called dispute was challenged in the petition, including the constitutionality of certain provisions of the Industrial Disputes Act, cannot be pressed any longer as these matters have been settled by decisions of the Supreme Court. It has, however, been contended that the reference of the alleged dispute between the Bank and Harnam Singh is invalid on the ground that Harnam Singh is not a workman, and that in any case disputes between the Bank and one or two of its individual workmen are not disputes between the employer and his workmen within the meaning of the Act.

6. I may say at once that the contention that the dispute relating to Harnam Singh could Invalidly not be referred to the Tribunal on the ground that he is not a workman within the meaning of the Act is a matter which could be, and ought to be raised before and decided by the Tribunal itself rather than in a Writ petition in this Court, since it is a disputed question involving both law and fact which can only be decided after evidence.

7. Another point also raised, which seems to me one which could be properly raised before and decided by the Tribunal, provided that there existed a dispute upon which the Tribunal had jurisdiction to adjudicate, is the point that the termination of the services of Harbhajan Singh and Prem Singh is clearly covered by the Sastry Award, which is a general award dealing with relations between the banking companies and their employees and which is still in force. It must surely be open to the Bank to raise the plea that the dismissal of these two employees was in accordance with the principles laid down in the Sastry Award and the Tribunal could obviously accept this plea and refuse to grant the employees any relief on that ground.

8. It seems to me, however, that the most serious objection is that a dispute between an employer and one or two workmen is not an industrial dispute such as could be referred to the Tribunal under the Act. The term "industrial dispute"

is defined in Section 2(k) of the Act as meaning

"any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

The question whether a dispute between an employer and an individual workman, or perhaps one or two individual workmen, is an industrial dispute has come before Courts on a number of occasions before now. I myself had to consider the matter in *The Management the Hindustan Times Ltd., New Delhi Vs. The Chief Commissioner, Delhi and Others*, which was a case relating to the termination of the services of one M. L. Madan who was made a respondent in the writ petition.

In that case, after considering the various authorities, I was of the opinion that ordinarily speaking a dispute between an employer and an individual workman is not an industrial dispute within the meaning of Section 2(k) but that in certain special circumstances it can be and I held that the dispute regarding the dismissal of the workman in that case was an industrial dispute, since the allegation which had to be investigated by the Tribunal was whether the ostensible reasons given by the employer for terminating his services were not the real reasons, and that he had been really dismissed by way of victimisation on account of his activities in connection with the Union of Journalists, of which he was a prominent member.

9. In the present case it is clear that in fact there are really two disputes which have been referred to the Tribunal, one concerning the dismissal of Harnam Singh respondent, and the other relating to Harbhajan Singh and, Prem Singh, who were dismissed by the Bank in similar circumstances. As far as I see these disputes purely concern the Bank and the individuals concerned, and neither separately nor taken together does it seem to me that they can be regarded as a dispute between the Bank and its workmen.

No particular question of principle appears to be involved in either of the disputes and there does not appear to be any suggestion of a class of workmen so concerned or that any action by the body of workmen is contemplated. Usually in these disputes, even where only a few, or even sometimes one workman is concerned, the Union to which the workmen or workman concerned belongs take up that case and represents in the proceedings before the Tribunal and also in any writ petition which may be filed in this Court arising out of a dispute referred to the Tribunal, but there is no sign of any such thing in the present case.

10. Such being the case, the matter appears to be settled by the decision of the Supreme Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, in case that a lino-typist was dismissed from service by the appellant company on allegations of incompetence and his case was not taken up by any union of workers of the company nor by any of the unions of workmen employed in

similar or allied trades, but the U. P. Working Journalists Union, Lucknow, with which he had no connection whatsoever, took the matter to the Conciliation Board, Allahabad, and ultimately the U. P. Government made a reference to the Industrial Tribunal. It was held on a consideration of the relevant provisions of the U. P. Industrial Disputes Act 1947 and the rules framed thereunder that the dispute did not fall within the definition of an industrial dispute as used in that Act or Section 2(k) of the Central Act, and hence the reference of that dispute by the Government was bad.

11. Some attempt was made by the learned counsel for the Government to argue that this particular argument had to some extent taken the respondents by surprise. I find, however, that in the petition in paragraph 12 where the grounds on which the jurisdiction of the Tribunal is challenged are set out, ground (iv) reads -

"Because in this case there is no industrial dispute between the parties within the meaning of Section 2(k) of the Industrial Disputes Act."

This ground clearly governs the point raised which in any case could not have been a surprise to any one who had studied the case law regarding industrial disputes, since as I have said points of this kind have already frequently arisen. A request was made that the hearing of the case should be adjourned in order that the respondents might meet this point, but in my opinion it was a point which could be legitimately raised and ought to be expected to be raised on the wording of the petition itself, and it seems to me that it would merely be inviting trouble and provoking intervention by the union if I were to adjourn the proceedings in order that the union should come forward and state that it was taking up the part of the dismissed employees at this late stage.

I accordingly hold that the reference of the dispute to the Tribunal is invalid on the ground that no Industrial dispute within the meaning of Section 2(k) of the Act exists, and accordingly accept the petition and quash the order of reference but in the circumstances order the parties to bear their own costs.