

(1949) 03 FED CK 0003

In the Federal Court

The Shamnugger Jute Factory Co. Ltd. (North)

APPELLANT

Vs

S.N. Modak and Ors.

RESPONDENT

Date of Decision : 30-03-1949

Acts Referred:

Citation : AIR 1949 FC 150

Hon'ble Judges : Justice Hari Lal Kania, Justice Fazl Ali, Justice Patanjali Sastri, Justice Mukherjea, Justice Mehar Chand Mahajan

Bench : Full Bench

Judgement

Kania, C.J.—This is an appeal from a judgment of the High Court of Judicature at Fort William in Bengal. The appellant (petitioner) is a

limited company incorporated under the Scottish Companies Act and having its registered office in Dundee, Scotland, and carrying on business,

inter alia, in Calcutta within the ordinary civil jurisdiction of the Calcutta High Court. The appellant employed at its mill about 4844 workmen. On

9th February 1948, the petitioner employed one Kishan Deo, but his services were terminated on 23rd March 1948. There appeared to have

been trouble in respect of the discontinuance in service of this employee and apprehending a breach of the peace, the petitioners put up a notice

closing the mill. The mill was re-opened after a few days, but the work-men did not return to work because Kishan Deo and two other workmen

were not offered re. employment. The Government of West Bengal, acting under the Industrial Disputes Act, 1947, referred for adjudication by

the Industrial Tribunal the dispute which had arisen between the management of the petitioner Company and their workmen. The Tribunal

consisted of three members who are grouped as first respondents to this appeal. The Tribunal, in spite of the protest of the appellant, having

intimated that they will proceed with the adjudication, the petitioners filed a petition in the High Court asking for writs of certiorari and prohibition

and an order, in effect, under Section 45, Specific Relief. Act, claiming that the Tribunal had no jurisdiction to determine the question of payment of

wages during the lock-out period as an industrial dispute.

2. On the question of jurisdiction of the Court to issue the writs of certiorari and prohibition, the position is the same as in the appeal of the India

Paper Pulp Company Ltd. A.I.R. (36) 1949 P.C. 148.

3. The main dispute related to the lock-out and the claim of the workman to payment of wages during the period of the alleged lock-out. It seems

to us clear that the question whether the employers were justified in locking out their workmen would be an industrial dispute covered by the

words ""dispute which is connected with the employment or non-employment and with the terms of employment of such workmen."" The payment of

wages during the period of such lock-out would also be clearly an industrial dispute.

4. The only additional argument urged before us was that the claim to such payment should be determined under the Payment of Wages Act,

because Section 15 of that Act creates the Tribunal and under Section 22(d) of the Act the jurisdiction of civil Courts to hear a suit for wages is

excluded. In our opinion, this argument is unsound. Section 22(d) only prevents a suit for wages. It does not exclude any other proceeding

permitted by law to enforce payment. The Tribunal contemplated by Section 15, Payment of Wages Act is not, in our opinion, one which could

affect the jurisdiction of the Tribunal set up under Section 5. Industrial Disputes Act and to which a reference could be made under Section 10 of

that Act. The Tribunal set up under the Industrial Disputes Act has a much wider jurisdiction. In our opinion the two Acts are not in parimateria

and the contention that the jurisdiction of the Tribunal set up under the Industrial Disputes Act is excluded by the provisions of the Payment of

Wages Act is unwarranted. The other questions raised in the appeal are covered by the judgment of the Court in the Western India Auto, mobile

Association case A.I.R. (36) 1949 P.C. 111 delivered today. The appeal therefore fails and is dismissed. The appellants to pay the costs to

respondent 2.