

(2012) 07 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 9776 and 11692 of 2008 and M.P. No. 1 of 2008

T.M. Ramamoorthy

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 2(k), 2A

Citation : (2012) 135 FLR 993 : (2012) 4 LLJ 700 : (2012) LLR 1219

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.V. Muralidharan, for the Appellant; M.E. Rani Salvam, Addl. Govt. Pleader for Respondent Nos. 2 and 3 and Mr. S. Ravindran for M/s. T.S. Gopalan and Co., Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mr. K. Chandru, J.—These two writ petitions are filed by the same petitioner. In the first writ petition in W.P. No. 9776 of 2008,

the petitioner has challenged the vires of Section 2(k) of the Industrial Disputes Act and sought for a declaration that the said provision is

unreasonable, arbitrary and against rule of law and consequently direct the second respondent, which is a private management to promote him to

the post of Assistant Foreman in the existing vacancy. That writ petition was admitted on 10.6.2008. In the second writ petition in W.P. No.

11692 of 2008, the petitioner has challenged the award passed by the I Additional Labour Court, Chennai in I.D. No. 146 of 2001 dated 24.12.2007.

2. By the aforesaid order, the Labour Court dismissed the industrial dispute and held that the industrial dispute was not maintainable as an issue

relating to promotion cannot be covered by Section 2A of the Industrial Disputes Act and any such dispute will have to be raised u/s 2(k) of the Act.

3. The writ petition in W.P. No. 11692 of 2008 was admitted on 10.6.2008. In the petition for interim stay, only notice was ordered.

4. Section 2A of the Industrial Disputes Act (hereinafter referred to as "the Act") only provides for an industrial dispute to be raised by any

workman in respect of the dismissal, discharge or retrenchment or in case of otherwise terminated. The said Section 2A was introduced by Central

Act 35 of 1965 with effect from 1.12.1965. The law that existed before introduction of Section 2A as determined by the Supreme Court was that

in respect of any industrial dispute, as defined u/s 2(k) of the Act, the dispute will have to be supported by a substantial section of workmen

employed in that establishment. If it is not a collective dispute, then such dispute cannot be referred for adjudication. The said definition provision

has been in the statute book ever since from 1947 i.e., when the Act was enacted. The object of the said provision as held by the Supreme Court

was that an industrial dispute can be only a collective dispute between a body of workmen on one side and the management on the other side. It

was realised later that for an individual to be out of employment, then he has to get the support of other workmen employed by the same employer

that the individual workman may be left high and dry by other workmen including his trade union. Hence the Parliament thought fit to amend the

Act by introducing Section 2A as a beneficial piece though it was contrary to the original scheme of the Act. At the relevant time, many trade

unions had objected to the amendment but the Parliament thought fit that for a class of disputes relating to non-employment, there must be

adjudication forum for the individual workmen. Hence the petitioner cannot contend that Section 2(k), which defines an industrial dispute, had

become unconstitutional, without there being any legal basis. u/s 2A of the Act, a dispute relating to individuals can only be in respect of their non-

employment. In respect of other disputes, it can be raised by a substantial body of workmen and that alone will be considered as an industrial

dispute. It is not clear as to how a definition of the provision is violative of Article 14 of the Constitution of India or in any way contrary to the

Scheme of the Act.

5. Since the attack is on Section 2(k) of the Industrial Disputes Act, it is necessary to reproduce Section 2(k), which reads as follows:

any dispute or difference between employers and employers, 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.

6. Thus, the definition is on general terms. It is only in case where such a dispute arises for consideration, the appropriate Government can give

reference for adjudication of the said dispute in case there is no settlement between the parties. It is the judge made law and also taking note of the

relevant legislation in other Commonwealth Countries such as U.K., Australia, the Supreme Court had interpreted the necessity of the individual

dispute to become an industrial dispute that it should be sponsored by the body of workers employed under the said employer. The Supreme

Court had an occasion to consider the full import of the term Section 2(k) while considering the dispute under the U.P. Industrial Disputes Act

which also has a similar provision, vide its judgment in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . The Supreme Court in

paragraphs 19, 24, 25 and 26 had observed as follows:

19...If the expression "Industrial dispute" as ordinarily understood and, construed conveys a dispute between an employer on the one hand and the

workmen acting collectively on the other, then the definition of those words cannot be widened by a statutory rule or regulation promulgated under

the Statute or by Executive fiat.

24. This Court discussed the scope of industrial dispute as defined in Section 2(k) of the Central Act, and after referring to the conflict of judicial

opinion as to its applicability to the case of a dispute between an employer and a single workman further observed:

The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it.

Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of

the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which

involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen.

25. Although the question did not directly arise, this Court in *D.N. Banerji v. P.R. Mukherjee*, discussed the meaning of the expression "Industrial dispute" and was of the opinion that it conveys the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides.... But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens, it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress.

26. This view is in consonance with the basic idea underlying modern industrial legislation. The interpretation given to the corresponding phrase "trade dispute" in English law and "Industrial dispute" in Australian law also accords with this view and in the absence of an express provision to the contrary or necessary intendment there is no reason to give a different interpretation to the expression in the Indian Statute.

7. Therefore, it is only to save an individual worker, an amendment to the Industrial Disputes Act was made and Section 2A was introduced.

Therefore, by attacking the definition u/s 2(k) as unconstitutional, the petitioner cannot re-write the provisions of the Industrial Disputes Act to suit his convenience.

8. The writ petition filed by the petitioner, challenging the vires of Section 2(k) of the Act is clearly misconceived and it is liable to be rejected. This

Court do not find any arbitrariness under Article 14 of the Constitution of India. On the other hand, the petitioner had not kept in mind the history

behind the legislation. Even assuming that the petitioner succeeds in attacking Section 2(k) of the Industrial Disputes Act, it does not give any relief

to the workman to seek for a direction against a private employer. On that score also, the writ petition in W.P. No. 11692 of 2008 does not stand

scrutiny by law. Once it is held that only a class of disputes relating to non-employment alone can be raised as an industrial dispute, u/s 2A of the

Act, the petitioner's prayer in the claim statement in I.D. No. 146 of 2001 clearly showed that he wanted to promote him to the post of an

Assistant Foreman. This does not involve any non-employment and do not fall under any of the items set out u/s 2A of the Act. Therefore, the

Labour Court was right in rejecting I.D. No. 146 of 2001 as not maintainable. In the light of the above, both the writ petitions fail and the same

shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.