Workmen, Represented by The C.M.C. Harijan Mazdoor Sangha Vs The VIII Industrial Tribunal, W.B. and Others

Court: Calcutta High Court

Date of Decision: Sept. 23, 1993

Acts Referred: Industrial Disputes Act, 1947 â€" Section 10, 10(1), 2(k), 2(s)

Citation: 98 CWN 412

Hon'ble Judges: N.K. Mitra, J

Bench: Single Bench

Judgement

N.K. Mitra, J.
The short point involved in this case is, whether the dispute referred to by the Government of West Bengal to the Eighth

Industrial Tribunal for adjudication is an ""industrial dispute"" within its meaning as defined in section 2(k) of the Industrial Disputes Act, 1947. The

petitioner Union raised a dispute before the State of West Bengal over the appointment of new hands in Class IV posts in the Conservancy and

Motor Vehicle Departments of the Calcutta Municipal Corporation in preference to the claims of the sons and relatives of the retired/deceased

Scheduled Caste and/or Scheduled Tribe employees of those departments. Being satisfied that an industrial dispute existed between the Calcutta

Municipal Corporation and their workmen represented by the Calcutta Municipal Corporation Harijan Mazdoor Sangha over the issue, the State

Government, referred the matter to the Eighth Industrial Tribunal for adjudication of that dispute. After receipt of the reference, notices were issued

upon both the parties and they filed their respective written statements. Subsequently, the Calcutta Municipal Corporation moved a petition before

the Eighth Industrial Tribunal for deciding the following issues as preliminary issues :--

(i) If the preference of employment of the sons and relatives of the deceased/retired employees of a particular department, class and caste/tribe can

constitute Industrial Dispute when the issue in reference does not disclose or complain any breach of statutory or contractual obligation.

(ii) Is the issue vague, bad in law and not answerable. Tribunal was pleased to take up hearing of the preliminary points suggested by the

Corporation. The union, namely, Harijan Mazdoor Sangha filed a rejoinder on 29.2.80. Both sides have agrued in length before me on the

preliminary issues as suggested by the Corporation. In addition Corporation filed a written argument.

2. The Eighth Industrial Tribunal by its Award dated 7th May. 1980 decided the said preliminary issues against the petitioner Union holding

interalia, that the dispute referred to the said Tribunal for adjudication by the State Government was not an ''industrial dispute'' and as such, the

Tribunal had no jurisdiction to adjudicate upon the issue as contained in the order of reference. The said decision of the Eighth Industrial Tribunal

(Annexure ""D"" to the writ application) is the subject matter of challenge in the present Rule. The Rule has been contested by the Calcutta Municipal

Corporation by filing affidavit-in-opposition to which the petitioner Union also filed its reply. The petitioner Union also made an amendment petition

on 30th August, 1982 in connection with the Civil Rule, annexing a rejoinder dated 29th February, 1990 filed before the Eighth Industrial Tribunal

(Annexure ""B"" to the said subsequent application), raising inter alia, the following points for consideration amongst others :--

(a) that an ""industrial dispute"" may exist in respect of any kind of difference between employer and employer or between employer and workmen

or between workmen and workmen;

(b) that the appropriate Government in exercising the powers conferred u/s (10) of the I.D. Act, 1947, is not legally bound to disclose or complain

any breach of statutory or contractual obligation in the order of reference;

(c) that an soon as the Respondents stopped the age old benefit enjoyed by the workmen by way of employment of their sons and close relatives

after their death and/or retirement, the workmen of Motor Vehicles and Conservancy Departments represented by the trade union namely,

Calcutta Corporation Harijan Mazdoor Sangha (Regd. No. 12130), raised the present industrial dispute, the validity and legality of which is

beyond the scope of challenge.

Alongwith the said rejoinder, the petitioner Union also submitted before the Tribunal certain circulars for consideration, as stated in paragraph 7 of

the said application which was filed on 30th August, 1982 in this Hon''ble Court.

3. The Learned Counsel appearing on behalf of the petitioner Union contended inter alia that the dispute referred to the Eight Industrial Tribunal for

adjudication by the State Government is an ""industrial dispute"" within its meaning as defined in section 2(k) of the Industrial Dispute Act. 1947 and

as such the impugned decision and/or award is not valid and legal and thus is liable to be set aside. In support of his contention the Learned

Counsel referred to the decision in AIR 1949 111 (Federal Court) ; AIR 1957 SC 329; AIR 1958; SC 1026; (1974) 2 LLJ 179; etc.

4. The learned senior counsel appearing on behalf of the Calcutta Municipal Corporation, however, referred to Section 2(k) and 2(s) of the

Industrial Disputes Act 1947 and contended inter alia, that the words ""any person"" as used in section 2(k), of the Act mean a person connected

with the industry or business, but the heirs of a deceased/retire employee are not connected with the industry or business and the word works man

as used in Section 2(s) also means only the person or persons who is/are connected with business or trade or industry including a person

connected with such concern but does not include the heirs of a retired or deceased employee. The Learned Counsel further contended that the

Calcutta Municipal Corporation has already declared as own methods of recruitment referring to Annexure ""A"" to the affidavit-in-opposition, and

in view of such method as set up by the Calcutta Municipal Corporation there was no scope for any industrial dispute regarding the employment of

new hands in the Class IV in the conservancy and motor Vehicle Department of the Calcutta Municipal Corporation in preference to the claim of

the son and relative of the deceased/retired Scheduled Castes or scheduled Tribes employee of those Department. Further according to the duled

Tribes employee of those Department. Further, according to the Learned Counsel for the Calcutta Municipal Corporation, the management has the

right to conduct its business in the manner it thinks fit and he referred to the regulation made by the Calcutta Municipal Corporation under the

Calcutta Municipal Act, 1951. The Learned Counsel further contended that the decision cited by the Learned Counsel for the petitioner Union are

all distinguishable on facts and in support of his contentions referred to the decisions in AIR 1966 SC 366; AIR 1968 SC 529; AIR 1968 SC

554; Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, and AIR 1970 SC 1407.

5. The Learned Counsel appearing on behalf of the petitioner, however in reply, contended inter alia, that the decisions cited on behalf of the

Calcutta Municipal Corporation are also distinguishable on facts, and also opposed the contention of the Learned Counsel, appearing on behalf of

the Calcutta Municipal Corporation, that since only a portion of the laborers were agitating over the method of recruitment and/or employee,

before the Industrial Tribunal and not the majority of the employees, the dispute could not be termed as Industrial dispute, contending inter alia,

that under the law even the dispute concerning an individual dispute between a single workman espoused by the Union, and its employee also

becomes an ''industrial dispute'' as defined in Section 2(k) of the Act if there exists a community of interest.

Industrial dispute"" has been defined in Section 2(k) of the Industrial Disputes Act, 1947 as follows : -

(k) industrial dispute"" means 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 of the terms of employment or with the conditions of labour,

of any person;

and a workman has been defined in the following terms u/s 2(s) of the Act:

(s) ""workman"" means any person finding on apprentice) employed in any industry to do any; manual unskilled. skilled, technical, operational clerical

or supervisory work, for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under

this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with. or as a

consequence of that dispute whose dismissal, discharge or retirement has led to that dispute, but does not include any such persons-

(i) who is subject to the Air Force Act 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity draws waves exceeding one thousand six hundred rupees per mensen or exercises, either by

the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

6. From the above definition of ""industrial dispute"" it therefore, becomes clear, that any dispute or difference between employer or employee or

employer or workman which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of

any person is an industrial dispute. The term ""non-employment as used in Section 2(k) of the Act has a special significance as has been held by the

Federal Court in its celebrated judgment in the case of AIR 1949 111 (Federal Court) . The word ""non-employment"" has to be read with the

definition of ""workman"" as given in Section 2(s) of the Act, for the purpose of any proceeding under the Act, in relation to an industrial dispute, and

the term "workman" as defined in Section 2(s) of the Act also includes an ex-employee as has been held by the Supreme Court in the case of

Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta, . Moreover, in the case of Kays Constructions Co. (Private) Ltd. vs. Its

Workmen, reported in AIR 1959 SC 208, the Supreme Court referring to the word ""industrial dispute"" as defined in Section 2(k) of the Industrial

Disputes Act, 1947 observed inter alia, as follows : -

The definition of the expression ''industrial dispute'' is wide enough to cover a dispute raised by the employer''s workmen in regard to the non-

employment of others who may not be his workmen at the material time.

Further, the Supreme Court in the case of The Workmen Vs. Greaves Cotton and Co. Ltd. and Others, , answering to the contentions raised

before the Supreme Court on behalf of the appellants therein, specially the fourth one namely, whether the workmen can raise a dispute about non-

workmen as regards the terms of employment and under what circumstances, referring to and discussing the well known cases as Workmen of

Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, and also All India Reserve Bank Employees Association Vs. Reserve Bank

of India, held inter alia, as follows :-

19. It would therefore appear that the consistent view of this Court is that non-workmen as well as workmen can raise a dispute in respect of

matters affecting their employment, conditions of service, etc., where they have a community of interests, provided they are direct and are not

remote. As stated in the Reserve Bank of India''s case (supra) ""but workmen cannot take up a dispute in respect of a class of employees who are

not workmen and in whose terms of employment, those workmen have no direct interest of their own.

7. So far as the present case is concerned, it is quite clear that the employees represented by the petitioner Union have got direct interest in the

dispute referred to the Tribunal for adjudication by the State of West Bengal, inasmuch as, such dispute very much concerns the heirs and/or

nominees of such employees in the case of their retirement or death. Secondly, the Calcutta Municipal Corporation itself had approved the practice

of appointing the nominee of an employee or labour who retires or dies, as a substitute, as would appear from the circulars issued by the

Commissioner Calcutta Municipal Corporation being Circular No. 5 of 1975-76 dated 21st May, 1975, Circular No. 38 of 1976-77 dated 13th

January, 1977 and Circular No. 23 pg 1977-78 dated 12th August, 1977 (Annexures ""C"", ""E"" and ""D"" respectively to the affidavit-in-reply) and

as such, the dispute comes within the expression ''term of employment'' as such terms would ordinarily include, not only the contractual terms and

conditions, but those terms which are understood and applied by the parties in practice or habitually or by common consent, without ever being

incorporated in the contract, as has been held by the Supreme Court in the case of Workmen employed by Hindustan Lever Limited vs. Hindustan

Lever Limited, (1984) 4 S.C.C. 392. Again, the expression ''any person'' as used in Section 2(k) would also include a person, who is a non-

workman out an out. If the workman raising the dispute are directly or substantially interested in the conditions of employment of such non-

workman, the dispute raised, would be an ""industrial dispute"". Reference may be made to the decision in the case of Indian Bank. Madras vs.

Industrial Tribunal (Central), (1977) 51 F.J.R. 76. Moreover, one should not lose sight of an important fact that the Industrial Disputes Act, 1947

is a legislation, intended to bring about peace and harmony between labour and management in an industry, and for that purpose, it makes

previsions for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definition of ""industry"" ""workman"",

industrial dispute"" etc., so as not to whittle down, but to advance the object of the Act. The disputes between the forces of labour of labour and

management are not to be excluded from the operation of fee Act giving narrow and restricted meaning to the expressions used in the Act. A

pragmatic and not. a pedantic approach, must be adopted. Lastly, regarding matters to be referred to an industrial tribunal for adjudication, it is

now well settled that u/s 10(1) of the Industrial Disputes Act, 1947, the appropriate Government has the power to refer an industrial dispute or any

matter connected with or relevant to the dispute relating to any matter specified in the Second or the Third Schedule to an Industrial Tribunal for as

adjudication. The Supreme Court had also so held way back in the year 1986 in the case of The Sindhu Resettlement Corporation Ltd. Vs. The

Industrial Tribunal of Gujarat and Others, to the effect that in cases of industrial disputes, relating to matters other than those specified in the

Second or Third Schedule, both the Labour Courts as well as Tribunal will have jurisdiction to adjudicate. Moreover, after the Amendment Act of

1982 came into force with effect from 21st August, 1984 (vide S.O. 606 (E) dated 21st August, 1984), the Tribunals have had jurisdiction not

only to adjudicate upon industrial disputes relating to any matter specified in the Second and/or Third Schedule but also would have jurisdiction to

perform such other functions as may be assigned to them under the Act. In other words the amending Act confers greater jurisdiction to the

Tribunals than to Labour Courts.

8. Further, one thing should also be borne in mind, that when the appropriate Government, in all solemnity, refers an industrial dispute to a Tribunal

for adjudication, a statutory corporation doing public works and giving public utility services, should welcome a decision by the Tribunal on merits,

so as to absolve itself of any charge of being a bad employer or of victimization etc., and should not attempt to evade decision on merits by raising

preliminary objections on rigid technical grounds and drag the workmen to Courts, wasting time and money. Once a dispute is referred to the

Tribunal for adjudication by an appropriate Government, after due consideration of the dispute, the presumption is, that it is an "industrial dispute",

and the Supreme Court has times without number disapproved the practice of raising frivolous preliminary objections at the instance of the

employer, to delay and defeat, by exhausting the workman, the outcome of the dispute Reference may be made to such observations as made by

the Supreme Court in S.K. Verma Vs. Mahesh Chandra and Another, and D.P. Maheshwari Vs. Delhi Administration and Others, .

9. Accordingly, I conclude that the disputed reference made by the State Government to the Eighth Industrial Tribunal for adjudication was a valid

reference and the dispute raised therein is an ''industrial dispute''. The impugned award of the Industrial Tribunal on the preliminary issues is

quashed and set aside for the reasons as stated above, and the matter is remitted to the Tribunal for disposing of the reference on merits, and the

Tribunal must dispose of the matter positively within six months from the date of communication of this order to the Tribunal, and I make it clear,

that the time limit so fixed above, is peremptory and mandatory. I, however, make no observation regarding the merits of the dispute and I keep all

questions open, and this order is made only for the purpose of disposing of the present Rule, and the Tribunal, while disposing of the industrial

dispute referred to it by the State government on merits, shall dispose of the same in accordance with law, without being influenced and/ or swayed

by any of the observations made hereinbefore. The Civil Rule is thus made absolute without any orders to costs.