

SUPREME COURT OF INDIA

United Commercial Bank Ltd.

Vs.

Secretary, U. P. Bank Employees Union

C.A.No. 66 of 1952

(M. Patanjali Sastri, C.J.I., B. K. Mukherjea, N. Chandrasekhara Aiyar And Ghulam Hasan, JJ.)

19.09.1952

JUDGEMENT

CHANDRASEKHARA AIYAR, J.:-

1. This appeal is before us by virtue of special leave granted.

2. There was an order of the Government of India dated 21-2-1950 referring, under cl. (c) of sub-s. (1) of S. 10, Industrial Disputes Act, 1947 (14 of 1947), an industrial dispute to the Industrial Tribunal at Calcutta for adjudication. This order refers to two prior orders of the Government of India dated 13-6-1947 and 20-9-1949, which had already referred certain disputes; but we are not concerned with those prior orders now.

3. The relevant terms of the present order may be set out hereunder:

"AND WHEREAS a further industrial dispute has arisen after 13-6-1949 or is apprehended between the banking companies mentioned in Sch. I annexed hereto and their employees in respect of matters specified in Sch. II hereto annexed:

AND WHEREAS the Central Government considers it desirable to refer the further dispute for adjudication :

NOW, therefore, in exercise of the powers conferred by cl, (c) of sub-s. (1) of S. 10, Industrial Disputes Act, 1947 (14 of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Industrial Tribunal at Calcutta, constituted under S. 7 of the said Act."

4. Sch II comprises two items, and underneath the second item is the note,

"This list is not intended to be exhaustive."

The first item is

"Retrenchment, discharge, or dismissal of workmen after 13-6-1949."

In pursuance of the reference, which was numbered 21 of 1950, the Industrial Tribunal at Calcutta gave directions on 24-2-1950 to the appellant Bank on the one hand and their employees on the other to file their statement of claims concerning the matters referred to adjudication on 15-3-1950.

The General Secretary of the U.P.P. Bank Employee Union filed a petition before the Tribunal on 3-6-50 complaining of the victimisation of six employees who are respondents 2 to 7 in this appeal. It was alleged in the petition that their services were improperly terminated by the adoption of a device, namely, that of getting the new treasurer appointed by the Bank to say that he had no confidence in these employees, whom he did not know previously, and that he wanted them to be substituted by his own men. The other allegations made in the petition are irrelevant for purposes of this appeal. The Bank contended that they were not cases of victimisation at all but of termination of services as a sequence to the resignation of the treasurership of the Agra Branch by the treasurers, Messrs. Radhakishan Baijnath which rendered the closure of the Branch necessary for want of a suitable new treasurer. The Bank repudiated the allegation of the Union that the employees were discharged from service because of their trade union activities.

5. The Industrial Tribunal at Calcutta went into the question thus raised, and held that the respondents were employees of the Bank and not nominees of the treasurer, and that the order of their discharge on the mere ground that the new treasurer Sri Chundrimani was not willing to stand guarantee for them was bad in law. It directed their reinstatement with three months' back pay and allowances. The Bank carried the matter on appeal before the Appellate Tribunal but failed.

6. Mr. C. K. Daphtary, who appeared for the appellant Bank in this Court, conceded that the respondents might be treated as servants of the Bank and not the treasurer's or the Chief Cashier's nominees. He urged two grounds before us. The first was one of jurisdiction. He contended that as the dispute in question did not exist or could not have been apprehended before 1-4-1950 when the new treasurer, Sri Chundrimani, assumed charge of the duties of his office, the order of reference dated 21-2-1950 could not have comprised any such dispute, and the Tribunal had therefore no jurisdiction to decide the same. Sri Chundrimani was appointed on the 20th March and entered on his duties on the 1st April. The termination of the services of the respondents took place on the latter date, and according to the learned counsel, the dispute could be said to have arisen only when they were discharged. The second point was that even if the Tribunal had jurisdiction and was right in its view that the services were improperly terminated, it was a case for the award of compensation and not reinstatement,

7. What exactly is the meaning of the words "apprehended dispute" occurring in S. 10, Industrial Disputes Act, whose apprehension is referred to in the Act-the Government's or the parties' or any one else's, what is to happen if the apprehension does not crystallise into an actual dispute before the Tribunal enters on its duties as regards the reference, is the Tribunal bound even then to make note of the mere apprehension and proceed to decide a dispute notwithstanding the fact that the parties say that there is no dispute between them- are interesting questions of wide import ; but they do not fall to be decided in this appeal for a simple reason which we shall state presently. The point as to jurisdiction was not taken by the Bank before the Industrial Tribunal. Had it been raised, the Court could have investigated whether a dispute had actually arisen on the date of reference or was at least apprehended. As a matter of fact, it is urged for the employees that on the Bank's own showing, a dispute had arisen much earlier about the likely termination of the services of the respondents on the ground of the old treasurer resigning and the difficulty of finding a new treasurer rendering it necessary to close the Agra Branch; reference was made in this connection to Annexure II at page 70 of the paper Book setting out the application dated 23-2-1950 of the Bank to the Tribunal signed by the General Manager. It will thus be seen that the point as to jurisdiction is not a pure question of law; it is mingled with facts. The Bank cannot, in the circumstances, be allowed to raise it for the first time at the stage of appeal.

8. There is no substance in the second point. It was not raised in the application for special leave to this Court. Whether a discharged employee is to be reinstated in service, or whether compensation would be an adequate relief, is a matter of discretion. The original Tribunal considered reinstatement proper; and with this view the Appellate Tribunal agreed. There are no reasons for interference by this Court with the exercise of that discretion.

9. The appeal fails and is dismissed with the costs of the respondents (one set).

Appeal dismissed.

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