

SUPREME COURT OF INDIA

British India Corporation Ltd.

Vs.

Industrial Tribunal, Punjab"

C.A.No.31 of 1955

(N. H. Bhagwati, S. J. Imam and P. Govinda Menon, JJ.)

12.09.1956

JUDGEMENT

BHAGWATI, J:

1. This Appeal with Special Leave is directed against the judgement of the Punjab High Court which dismissed in limine the petition of the appellant for a writ under Art. 226 of the Constitution.

2. Certain industrial disputes arose between the management of the appellant and the workers of the said Mills as represented by the Dhariwal Mills Mazdoor Union, Dhariwal and by a notification dated the 30th October, 1953, hereafter referred to as the first reference, they were referred by the Punjab Government, for adjudication to respondent 1, Shri Avtar Narain Gujral, Industrial Tribunal, Punjab. Further disputes arose between the parties and the same were also referred to the same Tribunal by a notification dated the 12th December, 1953, hereafter referred to as the second reference. Respondent 1, after hearing the parties, made his award on both the references on the 9th July, 1954, and the same was submitted to the Punjab Government which published it in the Punjab Official Gazette Pt. I on date the 13th August, 1954.

3. In the meantime, before the said award was published by the Punjab Government, certain further disputes were alleged to have arisen between the parties and these also were referred for adjudication to the same Tribunal by a notification dated the 2nd August, 1954, hereafter referred to as the third reference.

4. Respondent 1 issued a notice to the appellant to file its written statement on the 31st August, 1954. The appellant thereupon filed on the 25th August, 1954, the petition under Art. 226 of the Constitution in the Punjab High Court praying for a writ, in the nature of prohibition restraining respondent 1 from proceeding with the third reference, a writ in the nature of certiorari commanding respondent 1 to transmit the records of the case and to quash the same and a writ of mandamus directing respondent 2, the State of Punjab, to cancel the notification dated the 2nd August, 1954, and for other reliefs. This was the petition dismissed in limine by the Punjab High Court on the 26th August, 1954. An application before the said High Court under Art. 133 (1) (c) of the Constitution for leave to appeal to this Court was rejected on the 31st August, 1954, and the appellant obtained from this Court special leave to appeal on date the 18th October, 1954.

5. The case of the appellant in the petition was that all the items which were referred by the Punjab Government for adjudication to respondent 1 in the third reference were covered by the relative

items in the first two references and the items sought to be referred to respondent 1 were though apparently differently worded, identical with those items in the earlier references which had already been adjudicated upon by respondent 1 and were the subject-matter of the award dated the 9th July, 1954. It may be noted that the said award had been published by the Punjab Government in the Official Gazette on the 13th August, 1954, and would become enforceable on the expiry of 30 days from the date of its publication, i.e., on the 12th September, 1954. An appeal was, however, filed against that award before the Labour Appellate Tribunal and that Tribunal gave its decision in the appeal on the 28th March, 1955. This decision became operative from the 27th April, 1955, and would have continued in operation at least for one year therefrom. On the 26th April, 1956, however, the Punjab Government issued a notification extending the period of operation of the said award for a further period of one year.

6. The appellant realised that a reference could be made to the Tribunal for adjudication of disputes where the appropriate Government was of the opinion that any industrial dispute existed or was apprehended and it therefore alleged that in making the third reference the respondent 2 "had yielded to political pressure of the labour leaders but in order to circumvent the decision of the Tribunal couched the demands covered in the previous references in a different language and were successful in hoodwinking".

7. The contention of the appellant, therefore, was that during the period of the operation of the said award it was not competent to the Punjab Government to refer the very same disputes for adjudication to respondent 1. It was contended that the award being binding on both the parties they could not be within the period of operation of the said award any industrial dispute which could be said to arise in respect of the same subject matter, and, in the absence of any such industrial dispute, any reference by the Punjab Government to respondent 1 for adjudication of the alleged industrial disputes was absolutely incompetent and respondent 1 had no jurisdiction to enter upon the said reference.

8. The industrial disputes set out in the third reference were as under: -

(1) Whether or not the workers who were illegally dismissed, discharged or retrenched after July, 1952, should be reinstated with due compensation;

(2) Whether or not the facilities given to workers before 1947 were actually withdrawn. If so, the same should or should not be restored;

(3) Whether or not all the employees whose mode of service has been changed or who have been transferred from one type of work to another are being paid their original wages. If not, the deductions made in their original dues may be restored to them;

(4) Whether or not the piece rate (contract basis) workers are getting wages, according to the high cost of living. If not, their wages may or may not be increased suitably;

(5) Whether the wages of Shri Dina Nath No. 833 of the Finishing Department, should be restored and increments allowed to other workers of his class should be given to him.

9. The appellant not having submitted to the jurisdiction of respondent 1 was not in a position to obtain any particulars of the statement contained herein nor was the Punjab Government in a position to controvert any of the allegations in the petition including that of mala fides, the petition having been dismissed by the Punjab High Court in limine. The arguments, therefore, which were

addressed before us by the learned Solicitor-General appearing for the appellant were confined to a mere comparison of the items of industrial disputes set out in the third reference with certain items of industrial disputes in the two earlier references.

10. It may be observed at the outset that the learned Solicitor-General did not press items (1), (2) and (5) of the third reference and respondent 1 would certainly have jurisdiction to adjudicate upon the same. No writ could therefore issue against respondent 1 in regard to these items.

11. Items (3) and (4), however, were the subject-matter of considerable argument before us and it was urged by the learned Solicitor-General that item (3) of the third reference could be compared with item (ii) of the second reference which was as under: -

"(ii) Workers working on contract basis when put on another job should be paid at the rate of their average earnings calculated on the basis of their previous three months earnings"

It was pointed out to him that item (ii) of the second reference related only to workers working on contract basis whereas item (3) of the third reference related to all the employees whether they were daily-wage earners or were working on contract basis. Even though the terms of the third reference in this behalf were wider than those of item (ii) of the second reference, it was contended that daily-wage earners were not at all affected and did not come into the picture at all for the simple reason that whatever job they were entrusted with carried the same remuneration as before and the position of the daily-wage earner was not at all affected by reason of his transfer from one job to another. The wording of item (3) of the third reference was, it was urged, a mere camouflaged in order to ostensibly show that item (3) of the third reference and item (ii) of the second reference related to two distinct subject-matters and it was, therefore, competent to the Punjab Government to refer that industrial dispute for adjudication to respondent 1 in spite of the operation of the award made in the earlier two references.

12. Item (4) of the third reference was compared with item (i) of the second reference which was "dearness allowance should be given to workers at Rs. 40 per mensem". Whereas in the case of item (3) of the third reference the terms were wider than those of item (ii) of the second reference, in the case of item (4) of the third reference the terms only brought in the piece-rate (contract basis) workers excluding from its province the daily wage earners. Even here it was pointed out to the learned Solicitor-General that item (4) of the third reference related to wages and not to dearness allowance but his reply was that even though the conceptions of wages and dearness allowance may be distinct, no such distinction was observed in the definition of wages as given in S. 2 (rr) of the Industrial Disputes Act, 1947, where wages were defined to mean "all remuneration capable of being expressed in terms of money and included such allowances (including dearness allowance) as the workman was for the time being entitled to". He therefore, urged that in effect the subject-matter of item (4) of the third reference was covered by item (i) of the second reference and no industrial dispute could ever arise in relation thereto during the operation of the award made in the earlier two references.

13. All these facts and circumstances which were adverted to by the learned Solicitor-General in the course of his argument did not appear in the petition nor in any part of the record before the Punjab High Court and the decision of Punjab High Court was apparently based on a mere comparison of the relative items in these references. In view of the fact that there was an allegation of mala fides on the part of the Punjab Government and the terms of items (3) and (4) of the third reference, though ostensibly worded differently from those of the relative items of the second reference were

alleged to be identical with the same, it was the duty of the Punjab High Court to accord a hearing to the parties after issuing notice to the respondent and record its decision after considering all the circumstances of the case which would have thus been brought to its notice. The High Court, however adopted a course which prevented the parties from presenting their respective cases before it and dismissed the petition in limine. We are of the opinion that it was not justified in doing so.

14. We are, therefore constrained to remand the matter back to the Punjab High Court with a direction that it will issue notice to the respondents and will determine the matter after bearing both the parties and considering their statements and evidence if any, adduced by them before it.

15. While determining the matter in the manner indicated above, the Punjab High Court will also determine whether, in view of the fact that items (1), (2) and (5) have not been pressed before us and the controversy now centers round items (3) and (4) only, it would be open to it to issue the writ or writs as asked for by the appellant only in regard to items (3) and (4) of the third reference, provided of course it comes to the conclusion that they have been covered by items (ii) and (i) of the second reference and there was no industrial dispute which could be said to arise between the parties in regard to those items during the operation of the award made by respondent in the earlier references. While doing so, the High Court will also determine whether the contention urged by the appellant in this behalf goes to the very root of the jurisdiction of respondent 1 to entertain the third reference in regard to those items or is one which tantamounts merely to a traverse of the allegations on merits. If the former is the correct position, a writ would be an appropriate remedy, though no writ could issue if the latter position obtained. The High Court will also determine whether items (3) and (4) of the third reference are severable from items (1), (2) and (5) thereof which are not pressed and whether in those circumstances it would be open to it to issue a writ or writs as asked for by the appellant in the event of its adjudication in regard to these items (3) and (4) being in favour of the appellant.

16. We, therefore, remand the matter back to the High Court to determine it in the light of the observations made above after issuing notice to the respondents. The Dhariwal Mazdoor Union, Dhariwal, applied before us to be made parties to the appeal or in any event to be allowed to intervene. We granted the latter relief in this Court but on the further hearing on remand we feel that it should be made a party respondent to the petition. We accordingly direct that the Punjab High Court will pass the necessary orders for impleading it as a party respondent to the petition and allow the appellant to make the necessary amendments in the petition for effectuating the same.

17. We are informed that respondent 1 will proceed to adjudicate upon the industrial disputes which are the subject-matter of the third reference at an early date. If it is to be restrained from proceeding with the same, it will have to be done by an appropriate order obtained by the appellant from the Punjab High Court. Before such order could be obtained some time must necessarily elapse and we, therefore, order that the proceedings before respondent 1 in the matter of the third reference should be stayed for two weeks from today within which the appellant shall obtain, if so advised, the necessary order for stay of these proceedings from the Punjab High Court.

18. Having regard to all the circumstances of the case we feel that the appropriate order for costs as regards this appeal before us should be that each party do bear and pay its own costs thereof.

Case remanded.

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