Central Provinces Transport Services Ltd.

Vs

Raghunath Gopal Patwardhan

Civil Appeal No. 320 of 1955

(P. Govinda Menon, S. K. Das, N. H. Bhagwati, T. L. Venkatarama Ayyar JJ)

06.11.1956

JUDGMENT

VENKATARAMA AYYAR J. -

The Central Provinces Transport Services Ltd., Nagpur, was, at the material dates, a public limited company, and the respondent was employed as a mechanic therein. In June 1950, goods belonging to the Company were stolen, and suspicion fell on the respondent. There was an enquiry into the matter, and that resulted in this dismissal on June 28, 1950, on the ground of gross negligence and misconduct. He was then prosecuted on a charge of theft, but that ended in his acquittal on March 3, 1952. Thereafter, he applied to the Company to be reinstated, and failing to get redress, filed on October 1, 1952, an application before the Labour Commissioner under section 16(2) of the Central Provinces and Berar Industrial Disputes Settlement Act XXIII of 1947, hereinafter referred to as the Act, for reinstatement and compensation. The Company resisted the claim on the ground, inter alia, that as the applicant had been dismissed on June 28, 1950, he was not an employed on the date of the application, that accordingly there was no "industrial dispute touching the dismissal of an employee" as required by s. 16, sub-ss. (1) and (2) of the Act, and that, in consequence, the proceedings under that section were incompetent. The Assistant Labour Commissioner, before whom the matter came up for hearing, agreed with this contention, and dismissed the application. The respondent preferred a revision against this order to the Provincial Industrial Court under s. 16(5) of the Act, and by its order dated February 5, 1954, that Court held that a dismissed employee was an employee as defined in s. 2(10) of the Act, that a dispute by such an employee was an industrial dispute within s. 2(12) of the Act, and that the application under s. 16(2) of the Act was therefore maintainable. In the result, the order of dismissal was set aside and the matter remanded for enquiry on the merits. Against that order, the Company appealed to the Labour Appellate Tribunal, which by its order dated October 19, 1954, affirmed the decision of the Provincial Industrial Court, and dismissed the appeal. The Company has preferred the present appeal against this order under Act. 136. Pending the appeal to this Court, the Company went into liquidation and has been taken over by the State of Madhya Pradesh, and is now being run under the name of Central Provinces Transport Services (under Government ownership), Nagpur. On the application of the respondent, the record has been suitably amended.

The point for decision in this appeal is whether an application for reinstatement and compensation by a dismissed employee is maintainable under s. 16 of the Act. That section, so far as is material to the present question, runs as follows :

> " (1) Where the State Government by notification so directs, the Labour Commissioner shall have power to decide an industrial dispute touching the

> dismissal, discharge, removal or suspension of an employee working in any industry in general or in any local area as may be specified in the notification.
>
> " (2) Any employee, working in an industry to which the notification under sub-section (1) applied, may within six months from the date of such dismissal, discharge, removal or suspension, apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages".

The argument of Mr. Umrigar for the appellant is that it is a condition prerequisite to the entertainment of an application for reinstatement under this section that there should be an industrial dispute touching the dismissal of an employee, that there was none such in this case, because the respondent was not an employee on the date of the application, having been dismissed long prior thereto and further because his dispute was an individual an not an industrial dispute.

It will be convenient at this stage to refer the relevant provisions of the Act, as they stood on the material dates. Section 2(10) defines an employee as follows :

> "employee" means any person employed by an employer to do any skilled or unskilled manual or clerical work for contract or hire or reward in any industry and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under section 31 or 32 whether before or after the discharge".

Section 2(12) defines "industrial dispute" as meaning "any dispute or difference connected with an industrial matter arising between employer and employee or between employers or employees". Under s. 2(13), "industrial matter" means "any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or refusal to employee and includes questions pertaining to (a) the relationship between employer and employee, or to the dismissal or non-employment of any of any person..."

It is not disputed that a question of reinstatement is an industrial matter as defined in s. 2(13) of the Act. The controversy relates to the question whether it is an industrial dispute as defined in s. 2(12) of the Act. The contention of the appellant is that it does not fall within that definition, because the further condition prescribed by s. 2(12) that it must be between an employer and employee is not satisfied. It was argued by Mr. Umrigar that when the respondent was dismissed on June 28, 1950, his employment came to an end, and that he could not thereafter be termed an employee, as that word is ordinarily understood, that it could not have been the intention of the legislature to include in the definition of an employee even those who had ceased to be in service, as otherwise there was no need for the further provision in s. 2(10) that discharged employees would in certain cases be employees; and that, in any event, the inclusive portion of the definition would, on the principle Expression unius est exclusio alterius, operate to exclude all ex-employees, other than those mentioned therein.

The question whether a dismissed employee is an employee as defined in s. 2(10) of the Act must be held to be practically concluded by the decision of the Federal Court in Western India Automobile Association v. Industrial Tribunal, Bombay [1949] F. C. R. 321.]. There, the point for determination was whether a claim for reinstatement by a dismissed workman was an industrial dispute as defined in s. 2(k) of the Industrial Disputes Act XIV of 1947. It was held that the definition in s. 2(k) including as it did, all disputes or differences in connection with employment or non-employment of

a person was sufficiently wide to include a claim for reinstatement by a dismissed workman. Counsel for the appellant sought to distinguish that decision on the ground firstly, that its was given on a statute different from what we are concerned with in this appeal, and secondly, that the reference there, included other items of dispute, which undoubtedly fell within the Act, the question of reinstatement took its complexion from those items. We do not see any force in either of these contentions. Section 2(12) and s. 2(13) of the Act are substantially in pari materia with s. 2(k) of Act XIV of 1947, and the ratio of the decision in Western India Automobile Association v. Industrial Tribunal, Bombay (supra) will be as much applicable to the one enactment as to the other. Nor does it make any difference that there were comprised in the reference other items which fell within the definition under s. 2(k), because if the Government had no jurisdiction under the Act to refer the question of reinstatement of dismissed employee for adjudication, then the reference must, to that extent, be treated as a nullity, and it would be immaterial that it was intra vires as regards the other items of dispute.

We are also unable to accede to the contention of the appellant that the inclusive clause in s. 2(10) of the Act is an indication that the legislature did not intend to include within that definition those who had ceased to be in service. In our opinion, that clause was inserted ex abundanti cautela to repel a possible contention that employees discharged under s. 31 and 32 of the Act would not fall within s. 2(10), and cannot be read as importing an intention generally to exclude dismissed employees from that definition. On the other hand, s. 16 of the Act expressly provides for relief being granted to dismissed employees by way of reinstatement and compensation, and that provision must become useless and inoperative, if we are to adopt the construction which the appellant seeks to put on the definition of employee in s. 2(10). We must accordingly hold agreeing with the decision in Western India Automobile Association v. Industrial Tribunal, Bombay (supra) that the definition of "employee" in the Act would include one who has been dismissed and the respondent cannot be denied relief only by reason of the fact that he was not in employment on the date of the application.

It was next contended that even assuming that the respondent was an "employee" as defined in s. 2(10) of the Act, his dismissal could not be held to be an industrial dispute as defined in s. 2(12), because that term properly meant that the dispute was one between employer on the one hand and the industry represented by its workmen as a class on the other, and that a dispute between the employer and a single employee would be an individual dispute and would therefore be outside the purview of s. 2(12). It was argued in support of this contention that the object of all labour legislation was not so much to deal with individual rights of workman, for the enforcement of which there was an appropriate forum in the ordinary courts of the land, as to regulate the relation between capital and labour, treating them as distinct entities, so that public peace and order might not be disturbed and production might not suffer, and for that end, to recognise the right of labour to speak and act as a body for the protection of its common interests and to provide a machinery for speedy settlement of disputes which that body might raise; and that it could not have been the intention of the legislature, where the above considerations did not operate, to interfere with the normal relations between employer and employee under the law and to provide an additional forum to the employee to vindicate his rights. Reliance was placed in support of this contention on decisions of the Madras, Calcutta and Patna High Courts and of Industrial Tribunals.

The question whether a dispute by an individual workman would be an industrial dispute as defined in s. 2(k) of the Act XIV of 1947, has evoked considerable conflict of opinion both in the High Courts and in Industrial Tribunals, and three different views have been expressed thereon : (I) A dispute which concerns only the rights of individual workers, cannot be held to be an industrial dispute. That was the opinion expressed in Kandan Textiles v. Industrial Tribunal [[1949] 2 M. L. J.

789 : A. I. R. 1951 Mad. 611.]. There, Rajamannar C. J. observed that though the language of the definition in s. 2(k) was wide enough to include such a dispute, the provisions of s. 18 suggested that something more than an individual dispute between a worker and the employer was meant by an industrial dispute. The other learned Judge, Mack J., was more emphatic in his opinion, and observed that the Act was "never intended to provide a machinery for redress by a dismissed workman". It became, however, unnecessary to decide the point, as the court came to the conclusion that the reference itself was bad for the reason that there was no material on which the Government could be satisfied that there was a dispute. The views expressed in Kandan Textiles v. Industrial Tribunal (supra) were approved in Manager, United Commercial Bank Ltd. v. Commissioner of Labour [A. I. R. 1951 Mad. 141.]; but here again, the observations were obiter, as the point for decision was whether a right of appeal conferred by s. 41 of the Madras Shops and Establishments Act XXXVI of 1947 was taken away by implication by Act XIV of 1947. The question, however, arose directly for decision in J. Chowdhury v. M. C. Banerjee [[1951] 55 C. W. N. 256.], in which the order of the Government referring the dispute of a dismissed employee to the adjudication of a Tribunal was attacked as incompetent, and it was held by Mitter J., following the observations in Kandan Textiles v. Industrial Tribunal (supra) that the dispute in question was not an industrial dispute, and that the reference was, in consequence, bad.

(II) A dispute between an employer and a single employee can be an industrial dispute as defined in s. 2(k). That was the decision in Newspapers Ltd., Allahabad v. State Industrial Tribunal, U. P. [A. I. R. 1954 All. 516.]. In that case, a reference of a dispute by a dismissed employee and the award of the Tribunal passed on that reference were attacked as bad on the ground that the dispute in question was not an industrial dispute within s. 2(k) of Act XIV of 1947, and it was held by Bhargava J., that an industrial dispute could come into existence even if the parties thereto were only the employer and single employee and that the reference and the award were, in consequence, valid. A similar decision was given by a Full Bench of the Labour Appellate Tribunal in Swadeshi Cotton Mills Company Ltd. v. Their Workmen [[1953] 1 L. L. J. 757.].

(III) A dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen. That was held by Bose J., in Bilash Chandra Mitra v. Balmer Lawrie & Co. [A. I. R. 1953 Cal. 613.], by Ramaswami and Sarjoo Prasad JJ., in New India Assurance Co. v. Central Government Industrial Tribunal [A. I. R. 1953 Patna 321.] and by Balakrishna Ayyar J., in Lakshmi Talkies Madras v. Munuswami and others [[1955] 2 L. L. J. 477.] and by the Industrial Tribunals in Gordon Woodroffe & Co. Ltd. v. Appa Rao [[1955] 2 L. L. J. 541.] and Lynas & Co. v. Hemanta Kumar Samanta [[1956] 2 L. L. J. 89.].

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 s. 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 by the Union or a number of workmen. If that were the correct position, the respondent was not entitled to apply under s. 16(2) of the Act as the workmen in the industry had not adopted his dispute as their own and chosen to treat it as their

casus belli with the Company. But then, we are directly concerned in this appeal not with the Industrial Disputes Act XIV of 1947 but with the Central Provinces and Berar Industrial Disputes Settlement Act XXIII of 1947, and in the view which we take of the rights of the respondent under that statute, there is no need to express a final opinion on the question whether a dispute simpliciter between an employer and a workmen would be an industrial dispute within s. 2(k) of Act XIV of 1947.

Now, the Central Provinces and Berar Industrial Disputes Settlement Act XXIII of 1947 with which we are concerned, is not in pari materia with Act XIV of 1947. In no doubt covers the ground occupied by that Act, and contains provisions relating to arbitration, adjudication, awards, strikes and lock-outs. But it contains more. It enacts in Ch. IV provisions which are intended to regulate the contract of employment between employer and workmen, a subject which is covered by a distinct piece of Central legislation, Industrial Employment (Standing Orders) Act XX of 1946. The object of that Act was, as appears from the preamble thereto, "to require employers in industrial trial establishments formally to define conditions of employment under them", whereas the object of the Industrial Disputes Act XIV of 1947 is, as set out in its preamble, "to make provision for the investigation and settlement of industrial disputes and for certain other purposes". Thus, even though the two enactments are pieces of what is termed labour legislation, their objects and their vision are different. While Act XIV of 1947 may be said to be primarily concerned with disputes of labour as a class, Act XX of 1946 is directed to getting the rights of an employee under a contract defined. Now, as the Central Provinces and Bear Industrial Disputes Settlement Act XXIII of 1947 covers the ground occupied by both Act XX of 1946 and Act XIV of 1947, it would be proper to interpret the expression "industrial dispute" therein in a sense wider than what it bears in Act XIV of 1947, so as to cover not only disputes of workmen as a class but also their individual disputes. And this view receives considerable support from other provisions of the Act. Section 41 enacts that an application under that section can be made either by an employer or employee concerned or by a representative of the employees concerned. Section 2(24) defines "representative of employees" as meaning a union or where there is no union, persons elected by the employees not exceeding five. Thus, there is clear recognition of the rights of an individual employee as distinguished from a class of employees, to more for redress. It is argued by Mr. Umrigar that this recognition is only for the purpose of s. 41 and that no inference can be drawn therefrom that the employee has a similar right to apply under s. 16(2). But the importance of s. 41 consists in this that it indicates that the Act has in contemplation the enforcement of individual rights of workmen also. Then we have s. 53, which runs as follows :

> "Save with the permission of the authority holding any proceeding under this Act, no employee shall be allowed to appear in such proceeding except through the representative of employees :
>
> Provided that where only a single employee is concerned he may appear personally".

This section again recognises the rights of employees to agitate their individual rights under the provisions of the Act. Section 16 is intended, in our opinion, to enable an employee to enforce his individual rights when there is an order of dismissal, discharge, removal or suspension, and in the context, "industrial dispute" must be interpreted as including the claim of an employee who has been dismissed, for reinstatement and compensation.

The view taken by the Industrial Court and the Labour Appellate Tribunal as to the meaning of "industrial dispute" in the Central Provinces Berar Industrial Disputes Settelement Act XXIII of

1947" is therefore correct, and this appeal must be dismissed with costs.

Appeal dismissed.

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