

## SUPREME COURT OF INDIA

Manager, Bengal Nagpur Cotton Mills Ltd.

Vs.

J. Bastian

C.A.No.544 of 1958

(P. B. Gajendragadkar and K. C. Das Gupta, JJ.)

26.02.1960

### JUDGEMENT

#### **GAJENDRAGADKAR, J.:**

1. This appeal by special leave arises out of an industrial dispute between the Manager, Bengal Nagpur Cotton Mills Ltd., (hereinafter called the appellant) and Mr. J. Bastian, who was employed by the appellant as a Head Clerk (hereinafter called the respondent). It appears that on 28-12-1955, the respondent handed over charge of his office under protest to Mr. Satyabralal, as a result of the order passed by the appellant. It is this termination of his service against which the respondent applied to the Assistant Labour Commissioner, Madhya Pradesh, under S. 16, sub-sec. (2) of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (hereinafter called the Act). He alleged that the termination of his service was illegal and improper and he prayed for an order for his reinstatement by the appellant. This claim was resisted by the appellant on the ground that the dispute between the parties was not an industrial dispute inasmuch as the respondent had voluntarily retired. It was also urged by the appellant that the claim for pension which the respondent sought to make at the time when he voluntarily retired was not valid or justified. Both these pleas were rejected by the Labour Assistant Commissioner with the result that the appellant was asked to reinstate the respondent in its service. The appellant was also directed to pay back wages to the respondent for the intervening period.

2. Against this decision the appellant preferred a revisional application before the Industrial Court, Madhya Bharat, Indore, under S. 19 of the Act. The same contentions were raised by the appellant before the Revisional Court and with the same result. The Industrial Court held that the view taken by the Assistant Labour Commissioner was right and that the respondent was entitled to an order of reinstatement with back wages. In the result, the revisional application filed by the appellant failed and was dismissed with costs. It is against this order that the appellant has come to this Court by special leave.

3. It may be convenient at the outset to state the relevant facts. The respondent was a Head Clerk working with the appellant for nearly 35 years. On 28-5-1955, he applied to the appellant that he should be retired at full pension as per the Company's rules. He also requested that in addition a reasonable gratuity may be paid to him (Ex. A-2). On 29-10-1955, he renewed his request and prayed that he may be allowed to avail himself of all leave due to him from 2-1-1956, and that he may be retired on full pension after the expiry of the said leave. A claim for pension was added in this letter on the ground that he had rendered meritorious service for a long period to the appellant

(Ex. A-1). On 5-12-1955, the respondent replied to the letter received by him from the appellant on 3-12-1955, that he was thankful for the appellant's willingness to grant him gratuity but that he was keen about his pension and he reminded the appellant that his request in that behalf had been recommended to the Head Office at Calcutta for sanction. That is why he stated that he did not know why gratuity was being granted to him because he was under the impression that the pension scheme was in force and that he was entitled to full pension. Accordingly he requested for a reconsideration of his case and pressed for grant of pension to him (Ex. A-3). Thereafter, on 27-12-1955, the respondent received a copy of the office order, by which he was told that he had been granted gratuity of Rs. 5,000 and that he would cease work from 28-12-1955 (Ex. AA-2). This office order was not acceptable to the respondent, who made a protest and stated that he was prepared to continue working until he was granted pension according to the rules and custom of the appellant. This protest was not well received by the appellant and he was ordered to hand over charge to Mr. Satyabrata. Accordingly, on 28-12-1955, the respondent handed over charge under protest. It is on these facts that the respondent contended that his services had been illegally terminated by the appellant and as such he was entitled to reinstatement.

4. At the hearing of the appeal before us the learned Attorney-General sought to raise two new points neither of which had been taken either before the Assistant Labour Commissioner or before the Industrial Court. One of these was taken in the petition for special leave before this Court and the other was sought to be added by a subsequent application for leave to take an additional point. The appellant seeks to contend that the present dispute is not an industrial dispute because it is an individual dispute simpliciter, and in support of this contention he seeks to rely on the decision of this Court in the case of *Newspapers Ltd. v. State Industrial Tribunal, Uttar Pradesh, (1957) SCR 754: ((S) AIR 1957 SC 532)*. The other new point which the appellant seeks to raise and which was taken in the petition for special leave before this Court is whether a dispute relating to a single employee which is not taken up by the employees or the union is an industrial dispute. We are not inclined to allow the appellant to raise either of these points. The first of these points was not taken even in the petition for special leave before us, and though it is a point of some importance, we do not think it would be right to allow the appellant to raise it at this late stage. In a matter of this kind it is generally necessary that points of such importance should be raised before the original industrial court. It is a matter concerning the interpretation of different relevant sections of the Act and in construing the said provisions prior decisions of the industrial courts on similar questions and the practice prevailing in respect thereof would be relevant.

5. Then, as to the other point which is sought to be raised by the petition for special leave, it is really a mixed question of fact and law. If the point is allowed to be raised it will have to be determined whether or not the dispute in question had been taken up by the union; and there can be no doubt that this Court would be very reluctant to allow a new point to be raised, the decision of which would need further enquiry into relevant facts. In the circumstances of this case, therefore, we are not allowing the learned Attorney-General to argue either of these two points.

6. That leaves only one question to be considered. It was urged before the authorities below that the present dispute is not an industrial dispute for the reasons that the respondent had not been dismissed; but he had voluntarily retired. If it was a case of voluntary retirement as pleaded by the appellant undoubtedly the respondent's application under S. 16 of the Act would be incompetent. But, can the termination of the respondent's services be properly characterised as voluntary retirement? In our opinion, there can be only one answer to this question and that is the one given by the authorities below. It is true that the respondent offered to retire, but he made it perfectly clear from the start that he was willing to retire provided he was given his due pension under the rules as

well as custom. In addition to the pension he made a claim for gratuity. In fact, when, his claim for pension was rejected he offered to continue to work as before and said that it was only if pension was granted that he would be willing to retire. It is common ground that the appellant has no rules of superannuation and no case has been made out for terminating the respondent's services either under Standing Order 23 or 25. Therefore, it is not a discharge for any reasons justified by the Standing Orders. It is discontinuance of service brought about by the peremptory order passed by the appellant asking the respondent to hand over charge to Mr. Satyabralal, and naturally the respondent submitted to the order under protest. In our opinion, there can be no doubt that the appellant had illegally and improperly terminated the service of the respondent, and so the dispute raised by him is an industrial dispute which was properly taken up by him before the Assistant Labour Commissioner.

7. It was faintly argued by the learned Attorney-General that the claim for pension which the respondent made was not justified and so it was suggested that the offer to retire coupled with a claim for pension should be construed as an offer to retire unconditionally. In our opinion, there is no substance in this argument. Both the authorities below have found that the respondent's claim for pension was fully justified. The agreement on which the appellant relied did not apply to the respondent's case. That is the concurrent finding of the authorities below. This finding is based on appreciation of evidence and it could not have been challenged even before a revisional court, much less could its correctness be dispute before us under Art. 136 of the Constitution. We may add that on behalf of the appellant an attempt was made to raise a new point about the competence of the State Legislature to include by definition or otherwise an individual dispute within the meaning of the expression 'industrial dispute' for the purpose of the Act. Since this point has not been raised so far nor has it been taken in the petition for special leave we have not allowed the appellant to raise it before us. That is why we propose to express no opinion on the said point.

8. The result is that there is no substance in this appeal and it is dismissed with costs.

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