

SUPREME COURT OF INDIA

Newspapers Ltd.; Allahabad

Vs.

U. P. State Industrial Tribunal

C.A.No.348 of 1959

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

04.05.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. The appellant, Newspapers Ltd., Allahabad, publishes three newspapers viz., the Leader, the Bharat and the Sangam. The Sangam, was an unprofitable publication, and due to financial stringency caused by the loss incurred on it the appellant had to close its publication. In consequence the appellant retrenched thereof its employees who are respondents 3 to 5. On behalf of the said employees an industrial dispute was raised and it was referred by the State Government for adjudication under its notification issued on January 15, 1953, under Ss. 3, 4 and 8 of the U. P. Industrial Disputes Act, 1947, and in pursuance of Cl. 10 of the Government Order of March 15, 1951. The industrial tribunal held that the appellant was not guilty of victimisation, but nevertheless it found that in retrenching respondents 3 to 5 the appellant had not followed the industrial principle of 'first come last go'. According to the tribunal respondents 6 to 8 who were junior to respondents 3 to 5 should have been first retrenched; and since no satisfactory explanation was given as to why respondents 3 to 5 were retrenched instead of respondents 6 to 8 the tribunal directed the appellant to reinstate respondents 3 to 5. Against the award thus made by the tribunal the appellant preferred an appeal but the said appeal was dismissed and the order for reinstatement was confirmed. Meanwhile the services of respondents 6 to 8 were terminated by the appellant.

2. It appears that pending the proceedings before the appellate tribunal respondents 6 to 8 moved the Allahabad High Court by a writ petition, No. 243 of 1953. By this petition they challenged the validity of the award passed by the industrial tribunal directing the reinstatement of respondents 3 to 5. Subsequently, the appellant itself filed before the said High Court its own writ petition No. 1421 of 1954. Both the writ petitions were heard and were dismissed by Chaturvedi J. Respondents 6 to 8 preferred an appeal against the dismissal of their petition; but the said appeal was dismissed on the ground that the said respondents were not affected by the tribunal's order. The other Appeal No. 36 of 1955 preferred by the appellant against the dismissal of its writ petition was considered on the merits and was ultimately dismissed. It is against this latter decision that the appellant has come to this Court by special leave.

3. It is unfortunate that in the paper book prepared in this case none of the documents relating to the appellant's Writ Petition No. 1421 of 1954 has been printed. It appears that documents in regard to the companion writ petition filed by respondents 6 to 8 have through mistake been printed. That being so, it was very difficult for Mr. S. P. Sinha, for the appellant, to make any point by reference

to the record of the proceedings. He, however, contended that the courts below were in error in rejecting the appellants' argument that the dispute in regard to the retrenchment of respondents 3 to 5 was not an industrial dispute. According to him it was an individual dispute which had not been sponsored either by any union or even by a body of workmen. On this point there is a concurrent finding of both the courts against the appellant. Chaturvedi J. has recorded his conclusion that on the evidence adduced before him he was satisfied that there was an association known as Leader Press Karmachari Sangh and that the cause of respondents 3 to 5 had been sponsored by the said association. The same finding has been confirmed by the appellate court.

4. Then it was urged that the association which sponsored the case of respondents 3 to 5 was an unregistered body and that made the reference invalid. Both the courts have held, and rightly, that it is not necessary that a registered body should sponsor a workman's case to make it an industrial dispute. Once it is shown that a body of workmen, either acting through their union or otherwise had sponsored a workman's case it becomes an industrial dispute.

5. Mr. Sinha further contended that no attempt had been made to prove this fact before the industrial tribunal. The obvious answer to this contention is that no plea had been apparently raised before the tribunal that the dispute was not an industrial dispute in the sense in which the argument was sought to be raised in the present proceedings.

6. Then Mr. Sinha attempted to contend that there was no scope for applying the principle 'first come last go' because respondents 3 to 5 were working in a department which was distinct and separate from the department in which respondents 6 to 8 were working. In our opinion, this point cannot be allowed to be raised for the first time at this stage. It is a question of fact and it should have been raised in the original writ proceedings themselves. Mr. Sinha fairly conceded that this point had not been considered in either of the two judgments and that must be because it was not argued before the courts. That being so, we are satisfied that there is no substance in this appeal. It is accordingly dismissed with costs.

Appeal dismissed.

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