Rai Sahib Ramdayal Ghasiram Oil Mills

Vs

The Labour Appellate Tribunal and Another

Civil Appeal No. 593/1960

(Syed Jafar Imam, K. Subha Rao, J. L. Kapur, J.R. Mudholkar JJ)

10.12.1962

JUDGMENT

MUDHOLKAR, J. –

This is an appeal by a certificate from the summary dismissal by the Bombay High court of a writ petition under Arts. 226 and 227 of the constitution. The relevant facts are these :

> Rai Sahib Ramdayal Ghasiram Oil Mills (hereinafter referred to as the Mills) were closed on September 1, 1952 on the ground that they had sustained heavy losses. The closure was found to be bona fide and the workmen were awarded retrenchment benefit. The mills, however, reopened on November 14, 1954, though their operations were carried on a reduced scale for avoiding further losses. some of the retrenched workmen were re-employed by the mills but evidently at lower wages than before. It was said on behalf of the mills that all the former workmen could not be absorbed but it would appear that they had in fact employed some new hands as well. An industrial dispute having been raised by the respondent-union because of the non-absorption of 11 workmen, the State Government constituted an Industrial Tribunal consisting of Mr. Kurian, under s. 7 of the Industrial Disputes Act, as it stood on that date, on May 13, 1955 and referred the following dispute to him :
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> "Whether the retrenched workmen referred to in the Annexures A, B and C of the Award of the Industrial Tribunal, in the Industrial dispute between the workmen and employers of Rai Sahib Ramdayal Ghasiram Rice, Ginning and Oil Mills, Peddapally dated 1, January, 1953 are entitled for reinstatement and compensation for unemployment after reopening of the said Mills."

It may be mentioned that shortly after the Tribunal was constituted and reference made to it, Mr. Kurian retired in consequence of which the Government of Hyderabad made the following notification on June 2, 1955.

> "In exercise of the powers conferred by sub-section (1) of section 7 of the Industrial Disputes Act 1947 (XIV of 1947) and in supersession of the Labour Department Notification No. B. 189/54/134 dated 15-10-1954 the Rajapramukh hereby constitutes an Industrial Tribunal consisting of Shri Bhikaji Patil as its sole member for the adjudication of industrial disputes in accordance with the provisions of the said Act, with immediate effect."

The respondents' case before the Tribunal was that after the reopening of the Mills all the former employees were entitled to be given preference over others and were also entitled to re-employment on the same wages as obtained at the date of closure. This claim was based upon the award made by the Industrial Tribunal on January 1, 1953 in the dispute which arose between the Mills and the respondents in consequence of the closure of the Mills in September, 1952. Para 24, cl. 6 of the Award on the basis of which this claim was made by the Union runs thus :

> "In the event of the factory being reopened within one year from the date of award becomes enforceable the employers will give first preference to those workmen in Annexures A, B and C, that is, no workmen will be employed in the factory other than those employed at present without giving them first opportunity for employment and that on terms as to basic wage and allowances that were in force on July 29, 1952."

The grievance of the respondents was that only a few of the former workers were re-employed and that too at lower wages and some new hands had been recruited disregarding the claim of some former employees. They also claimed the benefit of the provisions of s. 25(H) of the Industrial Disputes Act which were added to the Act by the Industrial Disputes (Amendment) Act, 1953.

Several contentions were raised by the appellant before the Tribunal but we need only refer to those which are now urged before us. One contention was that the Tribunal as it stood constituted on June 2, 1955 had no jurisdiction to adjudicate upon the dispute and the other was that the provisions of s. 25(H) of the Industrial Disputes Act as amended by Act 43 of 1953 were not available to the former workmen who had been retrenched. The first contention and other contentions to which we have not made any mention were rejected by the Tribunal but the contention that the provisions of s. 25(H) were not available to the retrenched workmen was upheld by it. The Tribunal, however, made an order in favour of those workmen in the following terms :

> "Though the workers cannot claim statutory benefits they cannot be denied social justice which is the underlying principle of section 25(H) and the rights that they had obtained under the previous award of 1952. I, therefore, order that the workers from Annexures A, B and C who are not taken back in service by the employers be re-employed and they should be paid their salaries and allowances from the date of the reopening of the mills, i.e., 14-11-1954. Their salaries would be the same as they were in force at the time of the closure of the mills."

An appeal was preferred by the appellants from the decision of the Tribunal before the Labour Appellate Tribunal, Bombay. That appeal having been dismissed the appellants preferred a writ petition before the High Court of Bombay which, as already stated, rejected it in limine.

It seems to us that the contention of the appellant that the Industrial Tribunal consisting of Mr. Patil had no jurisdiction to adjudicate upon the dispute is correct and must be upheld. Sub-s. (1) of s. 7 as it then stood empowered the appropriate Government to constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. Such a Tribunal was to consist of such number of members as the appropriate Government thought fit. Sub-s. (2) of s. 8 of the Act, as it then stood, provided that where a Tribunal consists of one person only and his services ceased to be available the appropriate Government may appoint another independent person in his place, and the proceedings shall be continued before the person so appointed. That being the legal position, the appropriate thing for the Government to do was to take

action under sub-s. (2) of s. 8 after Mr. Kurian's services ceased to be available. Instead of doing that the Government took action under s. 7 sub-s. (1) of the Act "in supersession" of its previous notification and constituted a fresh Industrial Tribunal consisting of Mr. Patil as its sole member. We need not consider here whether the old Tribunal still continued to exist and there was merely a vacancy therein and therefore there was no occasion to constitute a fresh Tribunal under sub-s. (1) of s. 7 because, having constituted a fresh Tribunal, the Government failed to refer the dispute in question to it under sub-s. (1)(c) of s. 10 of the Act. Apparently, the law advisors and the Government thought that a mere notification under sub-s. (1) of s. 7 would meet the requirements of law and there was no necessity to make a fresh notification under s. 10(1)(c) referring the particular dispute for adjudication to the Tribunal. No doubt, sub-s. (1) of s. 7 empowers the Government to constitute a Tribunal for adjudicating industrial disputes in accordance with the provisions of the Act. But merely constituting a Tribunal for such a purpose is not enough. It has also to act under s. 10 and make a specific reference to it of each dispute for adjudication. Without such a reference the Tribunal does not get any jurisdiction to adjudicate upon any dispute. On this short ground, the appeal must be allowed.

We will, however, say a word about the ground upon which the Tribunal thought it fit to give the retrenched workers the benefit of the provisions of s. 25(H) on the ground of social justice. Wide though the powers of an Industrial Tribunal are while adjudicating upon industrial disputes, it cannot arrogate to itself powers which the legislature alone can confer or do something which the legislature has not permitted to be done. Section 25(H) provides for re-employment of retrenched workmen in certain circumstances in preference to newcomers. But Act 43 of 1953 which enacted this provision clearly provides in sub-s. (2) of s. 1 thereof that "it shall be deemed to have come into force on October 24, 1953." Clearly therefore, the provisions of this section cannot apply to workmen who had been retrenched before this provision came into force. The legislature did not intend the provisions to come into force before October 24, 1953. When that is the mandate of the legislature no Tribunal has jurisdiction on the basis of its own conception of social justice to ignore it and apply the provisions or his underlying "principle" to a dispute which arose before the provisions came into force.

For both these reasons, we allow the appeal and quash the award of the Industrial Tribunal. There will be no order as to costs as the respondents have not put in an appearance.

Appeal allowed.

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