Workmen of M/s. Dharampal Premchand (Saughandhi)

Vs

M/s. Dharampal Premchand (Saughandhi)

Civil Appeal No. 532 of 1963

(CJI P. B. Gajendragadkar, V. Ramaswami – I, K. N. Wanchoo, M. Hidayatullayh JJ)

16.03.1965

JUDGMENT

GAJENDRAGADKAR, C.J.-

The short question of law which arises for our decision in this appeal is whether the order passed by the Delhi Administration referring the dispute between the applicants, the workmen of M/s Dharampal Premchand Saughandhi and the respondent, the employer, M/s Dharampal Premchand Saughandhi, Delhi, was valid. The order of reference has been passed by the Delhi Administration under ss. 10(1)(d) and 12(5) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called the Act). When the Industrial Tribunal, Delhi took up this matter for hearing, the respondent raised a preliminary objection that the reference was invalid inasmuch as the dispute referred to the Tribunal by the impugned order of reference is not an industrial dispute, but is merely an individual dispute which cannot be the subject-matter of a valid reference under s. 10(1) of the Act. This contention has been upheld by the Tribunal with the result that the Tribunal has held that it has no jurisdiction to adjudicate upon the merits of the dispute referred to it. It is against this order that the appellants have come to this Court by special leave. On behalf of the appellants, Mr. Sukumar Ghose contends that the view taken by Tribunal is not sound, and that raise the question as to whether the dispute referred to the Tribunal for its adjudication in the present case can be said to be an industrial dispute within the meaning of s. 2(k) of the Act.

The facts which it is necessary to state for the purpose of dealing with this point are very few and they are not in dispute. The respondent is a firm which carries on business as perfumers and tobacconists in Chandni Chowk, Delhi. On 28 July, 1961, the respondent passed the impugned order dismissing the services of its 18 employees. On that date, the respondent had in its employment 45 employees. It appears that on 16 July, 1961, the 18 employees who were dismissed by the respondent had become members of the Mercantile Employees' Association which is a registered Trade Union in Delhi. On 29th July, 1961, the said Association took up the cause of the dismissed employees and carried the dispute before the Conciliation Officer, Delhi. The conciliation proceedings however, failed, and at the instance of the Association the present reference was made on the 6th September 1961. It is the light of these facts that we have to decide whether the dispute referred to the Tribunal for its adjudication is an industrial dispute within the meaning of s. 2(k) of the Act or not.

Section 2(k) defines an "industrial dispute" as meaning any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the condition of labour, of any person. This definition shows that before any dispute raised by any

person can be said to be an industrial dispute, it must be shown that it is connected with the employment or non-employment of that person. This conditions is satisfied in the present case, because the dispute is in relation to the dismissal of 18 workmen, and in that sense, it does relate either to their employment or non-employment. The question however, still remains whether it is a dispute between employers and workmen. Literally construed, this definition make take within its sweep a dispute between a single workman and his employer, because the plural in the context, will include the singular. Besides, in the present case, the dispute is in fact between 18 workmen on the one hand, and their employer on the other, and that satisfies the requirement imposed by the fact that the word "workmen" in the context is used in the plural. But the decisions of this Court have consistently taken the view that in order that dispute between a single employee and his employer should be validly referred under s. 10 of the Act, it is necessary that it should have been taken up by the Union to which the employee belongs or by a number of employees. On this view, a dispute between an employer and a single employee cannot, by itself, be treated as an industrial dispute, unless it is sponsored or espoused by the Union of workmen or by a number of workmen. In other words, if a workmen is dismissed by his employer and the dismissed workman's case is that his dismissal is wrongful, he can legitimately have the said dispute referred for adjudication before an Industrial Tribunal under s. 10(1) of the Act, provided a claim for such a reference is supported either by the Union to which he belongs or by a number of workmen, vide Central provinces Transport Services v. Raghunath Gopal Patwardhan [[1956] S.C.R. 956] and The Newspapers Ltd. v. The State Industrial Tribunal, U.P. [[1957] S.C.R. 754].

This view is based on a consideration of the general policy underlying the provisions of the Act. As is well-known, the Act has been passed for the investigation and settlement of industrial disputes, and its material provisions have been enacted, because it was thought expedient to make provision for such investigation and settlement of disputes, keeping in mind the importance of the development of Trade Union movement on proper lines in this country. Having regard to this broad policy underlying the Act, this Court and indeed a majority of Industrial Tribunals, are inclined to take the view that notwithstanding the width of the words used by the Act in defining an "industrial dispute", it would be expedient to require that a dispute raised by a dismissed employee cannot become an industrial dispute, unless it is supported either by his Union or, in the absence of a Union, by a number of workmen. Unless such a limitation was introduced, claims for reference may be made frivolously and unreasonably by dismissed employees, and that would be undesirable.

Besides, in order to safeguard the interests of the working class in this country, it was thought that the development of Trade Union movement on healthy Trade Union lines was essential and that requires that disputes between employers and employees should be settle on a collective basis. A complaint against wrongful dismissal should therefore, be the subject-matter of reference, provided the workmen acting collectively take up the case of the dismissed employee and contend that the dismissal is unjustified or wrongful. It is on these grounds that this Court has held that an individual dispute arising from an alleged wrongful dismissal of an employee can be validity referred under s. 10 only if it is supported by the Union of the workmen to which the dismissed employee belongs or by a group of his co-employees. There is no dispute that the Mercantile Employees' Association has taken up the dispute on behalf of the 18 dismissed employees. In fact, as we have already indicated, the said Association took up this dispute before the Conciliation Officer and when the conciliation proceeding failed, it successfully moved the Delhi Administration to make a reference under s. 10(1) of the Act.

It was, however, urged before the Tribunal that besides the 18 dismissed employees no other employee of the respondent is a member of the said Association, and so, it was contended that the

said Association was not authorised to raise the dispute, and in the absence of proof of the fact that the dispute had been sponsored or espoused by the Union of the employees of the respondent, the reference should be held to be invalid. This contention has been upheld by the Tribunal; and so, the question which we have to decide is whether the Tribunal was right in holding that the Mercantile Employees' Association had no authority to raise and support the present dispute.

In support of its conclusion, the Tribunal has relied upon the decision of this Court in Bombay Union of Journalists and others v. The "Hindu", Bombay, & Anr. [[1962] 3 S.C.R. 893]. In that case, the services of one Salivateeswaran, who claimed that he was a full-time employee of the "Hindu", a daily newspaper published in Madras, were terminated and an industrial dispute was raised in respect of the said termination by the Bombay Union of Journalists. The contention raised by the employer was that the reference was invalid inasmuch as the dispute referred for adjudication was an individual dispute and not an industrial dispute. This contention was accepted by the Tribunal; and that brought the dispute before this Court.

In dealing with the effect of the decision pronounced by this Court in that case and particularly certain observations made in the course of the judgment, it is necessary to bear in mind one finding of fact which had been recorded by the Tribunal and confirmed by this Court. It appears that in that case, the appellants strongly relied upon a resolution passed on April 17, 1948, by which it was alleged that the Bombay Union of Journalists had taken up the dispute of Salivateeswaran against the "Hindu" and had decided to demand reliefs for the "retrenched Journalist". Evidence was led to prove that such a resolution had been passed, but that evidence was discarded both by the Tribunal and this Court, and this Court definitely found that "the evidence tends to establish the plea raised by respondent No. 1 that the record of the alleged resolution was fabricated with a view to support the case of Salivateeswaran". In other words, in point of fact, there was no reliable evidence to show that the Bombay Union of Journalists had taken up the case of the retrenched employee Salivateeswaran. In view of this finding, it follows that the observations made by this Court in regard to the requirements of a valid reference under s. 10(1) of the Act are in the nature of obiter observations.

It does appear that in dealing with the point of law as to the requirements of a valid reference, this Court observed that "the dispute, in the present case, being prima facie an individual dispute, in order that it may become an industrial dispute, it had to be established that it had been taken up by the Union of employees of the "Hindu", Bombay, or by an appreciable number of employees of the "Hindu", Bombay. Similarly, it was also observed that the "principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute, applied to the case before the Court"; and so, one of the tests which this Court applied was whether the persons who supported the cause, were employees of the same employer; if they were not, it was thought that they could not be regarded as interested in the dispute and as such, their support may not convert an individual dispute into an industrial dispute. That is why the support lent to the cause of Salivateeswaran by the Bombay Union of Journalists was found to be insufficient to convert the cause into an industrial dispute.

These observations, no doubt, prima facie lend support to the view which the Tribunal has accepted. It appears that the Bombay Union of Journalists had on its roll several working Journalists in other journals; but out of the three working journalists working with the "Hindu" at its Bombay office, two had become the members of the Bombay Union of Journalists, viz., Salivateeswaran and Venkateswaran. Tiwari, the third working journalist working in the office of the "Hindu", Bombay, had not become a member of the said Union. In the Office of the "Hindu", there were seven other

workmen, but they were working on the administrative side. In other words, out of the ten employees in the office of the "Hindu", seven were on the administrative side, and three on the journalism side; and out of these three, two were members of the Union. It is in the light of these facts that this Court expressed the opinion that the Bombay Union of Journalists was not competent to raise the dispute, and even if it had raised it, the dispute could not have become an industrial dispute.

In our opinion, the observations on which the Tribunal has relied in support of its conclusion in the present case, should not be read as laying down any hard and fast rule in the matter. Take, for instance, the case of an employer who employs 20 workmen, and assume that these workmen have not formed any Union. If the employer illegally dismisses all the workmen employed by him, it cannot be suggested that the dispute about the dismissal of these employees would not become an industrial dispute because there is no Union to support them and the dismissed employees themselves cannot convert their individual dispute into an industrial dispute. In the present case, out of 45 employees 18 have been dismissed, and there in no evidence to show that these employees have a Union of their own. In such a case, it would be difficult to hold that though the number of employees dismissed is 18, they cannot raise a dispute by themselves in a formal manner. Considerations which would be relevant in dealing with a dispute relating to an individual employee's dismissal, would not be material in dealing with a case where a large number of employees have been dismissed on the same day. It is not disputed that a union of workmen may validly raise a dispute as to dismissal even though it may be a union of the minority of the workmen employed in any establishment. The majority union, of course, can raise a dispute, and if a reference is made under s. 10(1) of the Act at its instance, the reference is valid. Similarly, if there is no union of workmen in any establishment, a group of employees can raise the dispute and the dispute then becomes an industrial dispute, though it may relate to the dismissal of an individual employee. This position is not disputed. If that is so, it is difficult, we think, to apply or extend the observations made in the case of Bombay Union of Journalists [[1962] 3 S.C.R. 893] to the present case. In the present case, we are dealing with a reference made by the Delhi Administration in relation to the appellants' contention that the dismissal of 18 employees is invalid, and not with a case of the dismissal of a single employee. Therefore, we do not think that the Tribunal was right in relying upon the decision in the case of Bombay Union of Journalists [[1962] 3 S.C.R. 893] in support of its conclusion that the present reference was invalid.

It is well-known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial disputes had necessarily to be pragmatic, and the tests which it applies and the consideration on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decisions of this Court in interpreting the effect of the definition prescribed by s. 2(k) of the Act were based on such pragmatic considerations. It may also be conceded that if the dismissal of an individual employee working in an establishment in Delhi is taken up by the union of workmen in a place away from Delhi, that would clearly not make the dispute an industrial dispute. Section 36 of the Act which deals with the representation of parties, incidently suggests that the union which can raise an individual dispute as to a dismissal validly, should be a union of the same industry. Generally, it is the union of the workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of an establishment have no union of their own, and some or all of them join the union of another establishment belonging to the same industry. In such a case, if the said union takes up the cause of the workmen working in an establishment which has no union of its

own, it would be unreasonable to hold that the dispute does not become an industrial dispute, because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. "Industry" has been defined by s. 2(j) of the Act and it seems to us that in some cases the union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no union of their own, and an appreciable number of such workmen had joined such other union before their dismissal. In fact, the object of trade union movement is to encourage the formation of larger and bigger unions on healthy and proper trade union lines, and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred under s. 10(1) of the Act, it should receive the support of the union consisting exclusively of the workmen working in the establishment concerned.

Besides, there is another way in which this question can be considered. If 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that they themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by this Court on the denotation of the words "industrial dispute" as defined by s. 2(k) of the Act. Therefore, we are satisfied that the Tribunal was in error in rejecting the reference on the preliminary ground that the dispute referred to it was an individual dispute and not an industrial dispute within the meaning of s. 2(k).

The result is, the appeal is allowed, the finding of the Tribunal on the preliminary issue is reversed, and the matter is sent back to the Tribunal for disposal in accordance with law. There would be no order as to costs.

Appeal allowed.

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