

Jahiruddin

Vs

K. D. Rathi, Factory Manager, The Model Mills Nagpur Ltd

Civil Appeal No. 156 of 1965

(CJI P. B. Gajendragadkar, K.N. Wanchoo, V. Ramaswami - I, R. Satyanarayana Raju JJ)

22.11.1965

JUDGMENT

SATYANARAYANA RAJU, J. –

This is an appeal, by Special Leave, against the judgment of a Division Bench of the Bombay High Court dismissing an application for the issue of a Writ of certiorari under Art. 226 of the Constitution to quash the order of the State Industrial Court at Nagpur.

For a proper appreciation of the questions that have been raised in the appeal, it would be necessary to state the material facts. The Model Mills, Nagpur (hereinafter referred to as the Mills) is a public limited company incorporated under the Indian Companies Act. On July 18, 1959, in exercise of the powers conferred by s. 18-A of the Industries (Development and Regulation) Act, 1951, the Central Government took over the management of the Mills and appointed the 3rd respondent as the authorised Controller of the Mills. On March 25, 1960 the State of Bombay (now the State of Maharashtra), in exercise of the powers conferred by ss. 3 and 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (hereinafter referred to as the Bombay Act) made a notification declaring the Mills to be a "relief undertaking" for a period of one year commencing from March 26, 1960 and ending with March 25, 1961. The appellants, eight in number, were, at the relevant time, the permanent employees of the Mills. It would be convenient to refer to them as "employees". On December 15, 1960, when the notification made by the State Government under the Bombay Act was in force, the employees abstained from work. Thereupon, the 1st respondent who is the Factory Manger of the Mills issued notices to the employees to show cause why they should not be dismissed from service for joining an "illegal strike". On January 6, 1961 the Factory Manager passed orders dismissing the employees from service. On January 12, 1961 the employees filed an application in the High Court of Bombay for the issue of a writ of mandamus directing the employees to be reinstated in service. On April 4, 1961, the exemption of the Mills from the application of s. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act (XXIII of 1947) (hereinafter called the State Act) was made. On April 25, 1961 the employees filed applications before the Assistant Commissioner of Labour claiming reinstatement with back wages. The High Court dismissed the Writ Petition filed by the employees with liberty to file a fresh petition, if necessary, since they were prosecuting their applications for relief of reinstatement before the Assistant Commissioner of Labour. In and by his order dated September 29, 1961, the Assistant Commissioner allowed the applications filed by the employees. He held that as there was no illegal strike the orders of dismissal were unsustainable and should be set aside. He directed that the employees should be reinstated with back wages. Against the orders passed by the Assistant Commissioner, the Mills preferred applications in revision to the State Industrial Court. By its order dated February 16, 1962, the Industrial Court allowed the revision applications filed by the Mills on

the ground that the applications before the Assistant Commissioner were not maintainable. On the merits, the Industrial Court agreed with the Assistant Commissioner that there was no illegal strike. Aggrieved by the orders of the Industrial Court, the employees filed an application under Arts. 226 and 227 of the Constitution for the issue of a writ of certiorari to quash the orders of dismissal passed by the Factory Manager and to direct their reinstatement with back wages. By its judgment dated August 12, 1963 the High Court dismissed the Writ Petition filed by the employees.

The High Court has held that the right to claim reinstatement is not a right which is available to an employee under the Common Law and that the relief of reinstatement is a special right which has been conferred on an employee under s. 16 of the State Act. In the opinion of the High Court, the essential pre-condition for an employee to claim relief under s. 16 is that he is an employee in an industry to which that section is applicable and in respect of which a notification under s. 16(1) also has been issued. The High Court has reached this conclusion by reason of the fact that the State Government issued a notification exempting the Mills from the operation of s. 16 of the State Act and that the exemption was withdrawn only on April 4, 1961 while the employees were dismissed on January 6, 1961. In the opinion of the High Court, by reason of the fact that s. 16 of the Act was not applicable, the dismissal of the employees even if it was wrongful did not give them a right to claim reinstatement and that to hold otherwise would be to give retrospective operation to s. 16 of the State Act which became applicable to the Mills on and from April 4, 1961 by reason of the withdrawal of the exemption. In the result, the High Court confirmed the finding of the State Industrial Court that the employees had no right to file applications under s. 16 of the State Act and the applications filed by them before the Assistant Commissioner were not maintainable.

Now it is contended by Mr. V. Sathe on behalf of the employees that though the industry was exempt from the operation of certain sections including s. 16 of the Act, on the date when the appellants were dismissed, there was an existing industrial dispute relating to an industrial matter between the employees and the Mills on April 4, 1961, when the notification withdrawing the exemption in favour of the Mills from the operation of s. 16 of the State Act was issued by the Government, that on the date when the employees filed an application under s. 16 before the Commissioner of Labour, the period of six months provided by that section had not elapsed and that therefore the employees could invoke the provisions of s. 16 and claim reinstatement. The learned counsel for the Mills, Mr. Phadke, has endeavoured to support the judgment of the High Court and the reasons on which its conclusions were rested.

The questions which arise for determination in this appeal are :

1. Whether the right of a dismissed employee to claim reinstatement, in appropriate cases, exists de hors s. 16 of the State Act ?
2. Whether by reason of the State Government's exemption of the industry from the operation of s. 16 on the date when the employees were dismissed from service, their right to apply for reinstatement ceased to exist ?

For a proper determination of the above questions, it is necessary to refer to the material statutory provisions. The State Act became law on June 2, 1947. S. 15 of the State Act empowers the State Government to appoint any person as Labour Commissioner for the State and he shall exercise all or any of the powers of the Labour Commissioner. Now s. 16 of the State Act as it stood at the relevant date provides 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) applies, 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 different powers that could be exercised by the Labour Commissioner are then set out in sub-s. (3) : "On receipt of such application, if the Labour Commissioner, after such enquiry as may be prescribed, finds that the dismissal.... was in contravention of any of the provisions of this Act or in contravention of a standing order.... he may direct that the employee shall be reinstated forthwith or by a specified date and paid for the whole period from the date of dismissal.... to the date of the order of the Labour Commissioner".

It is common ground that s. 16 is made applicable to the textile industry with effect from March 1, 1951 by a notification dated February 22, 1951. The provisions of s. 16 were thus applicable to the Mills till March 25, 1960, on which date, however, the State Government issued a notification in exercise of the powers conferred under ss. 3 and 4 of the Bombay Act declaring the Mills to be a 'relief undertaking'. The notification directed that the provisions of s. 16 of the State Act and Chapter V-A of the Industrial Disputes Act (XIV of 1947) (Lay-off and Retrenchment) shall not apply to the Mills and the it shall be exempt therefrom. This notification was extended by the State Government on March 8, 1961 for a further period of one year. A subsequent notification dated April 4, 1961 issued by the State of Bombay amended the earlier notification by withdrawing the exemption in so far as it related to s. 16 of the State Act.

The alleged participation by the employees in an illegal strike occurred on December 15, 1960 and the 1st respondent dismissed the employees in and by his order dated January 6, 1961. It was during the period between March 25, 1960 and April 4, 1961 when the exemption was in force that the incident which resulted in the Mills framing a charge against the employees happened and the subsequent orders of dismissal were passed.

It is submitted by the learned counsel on behalf of the Mills that the right of an employee to claim reinstatement has been granted by s. 16 of the State Act and since the Mills were exempt from the provisions of that section on the material dates the employees had no right to claim reinstatement. The Industrial Disputes Act (XIV of 1947) came into force on April 1, 1947. For our present purposes, it is not necessary to consider whether the right to claim reinstatement by a dismissed employee existed before the Central Act became law. The question about the jurisdiction of an Industrial Tribunal to direct reinstatement of a dismissed employee was raised as early as 1949, before the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay* ([1949] F.C.R. 321.). In that case, the Federal Court considered the larger question about the powers of industrial tribunals in all its aspects and rejected the argument of the employer that to invest the tribunal with jurisdiction to order reinstatement amounts to giving it authority to make a contract between two persons when one of them is unwilling to enter into a contract of employment at all. This argument, it was observed, "overlooks the fact that when a dispute arises about the

employment of a person at the instance of a trade union or a trade union objects to the employment of a certain person, the definition of industrial dispute would cover both those cases. In each of those cases, although the employer may be unwilling to do, there will be jurisdiction in the tribunal to direct the employment or non-employment of the person by the employer". The Federal Court also added :

"The disputes of this character being covered by the definition of the expression 'industrial disputes', there appears no logical ground to exclude an award of reinstatement from the jurisdiction of the Industrial Tribunal."

For nearly two decades the decisions of the Federal Court has been accepted without question. Therefore, after the Industrial Disputes Act, 1947, at any rate, the right of a dismissed employee to claim reinstatement in proper cases has been recognised. It is no doubt true that under the Central Act the right to claim reinstatement has to be enforced in the manner laid down by that statute, whereas under the State Act it is open to an employee to claim reinstatement without the intervention of the appropriate Government. This would not however make any difference.

It is argued that by reason of the exemption granted by the Bombay State when it declared the Mills to be a relief undertaking, rights and obligations which accrued to the employees or were incurred by the Mills during the period of exemption, stood abrogated. This takes us to the question as to the legal effect of the exemption granted by the State of Bombay. The notification issued by the State of Bombay is in the following terms :

"The Government of Bombay hereby directs that in relation to the said relief undertaking and in respect of the said period of one year for which that relief undertaking continues as such, the provisions of (i) Sections 16, 31 and 37, section 40 (in so far as it relates to lock-out) and section 51 and section 61 [in so far as it relates to clauses (b) and (c) of Rule 36 of the Central Provinces and Berar Industrial Disputes Settlement Rules, 1949] Central Provinces and Berar Act No. XXIII of 1947 and (ii) Chapter V-A of the Industrial Disputes Act, 1947 (XIV of 1947) shall not apply and the said relief undertaking shall be exempt from the aforesaid provisions of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (Central Provinces and Berar Act No. XXIII of 1947) and the Industrial Disputes Act, 1947 (XIV of 1947)."

The contention urged on behalf of the Mills proceeds on the assumption that the right to claim reinstatement has been granted by s. 16 of the State Act. As we have already stated, s. 16 only recognises that right of a dismissed employee, in appropriate cases, to claim reinstatement but does not confer the right. The section provides the procedure for enforcing the right. In this view, the right of the dismissed employee to claim reinstatement was in existence even during the period of exemption, but only it could not be enforced under s. 16. Once the exemption is withdrawn the status quo ante is restored and it is open to the employee to file an application for reinstatement provided, however, his application is within the period of six months from the date of his dismissal.

Under s. 4(1)(a), on a notification being made, the industry becomes a relief undertaking and the laws enumerated in the Schedule to the Bombay Act shall not apply. The Schedule specifies Chapter V-A of the Industrial Disputes Act and s. 16 of the State Act. Section 4(1)(a)(i) also provides that the relief undertaking shall be exempt from the operation of the Acts mentioned in the Schedule.

Learned counsel drew a distinction between the expressions 'exemption' and 'suspension' by relying upon the meanings given to these words in the Oxford Dictionary. 'Exemption' means 'immunity from a liability' whereas the word 'suspension' means 'put it off'. Basing himself on the dictionary meanings, learned counsel for the Mills has contended that the word 'exemption' is of a wider connotation than 'suspension' and means that the industry shall be immune from the liabilities arising under the statutes specified in the Schedule and that the order of dismissal having been passed while the exemption was in force, the Mills were immune from liability to reinstate the employees of their dismissal being held to be wrongful.

The order dismissing the employees was passed on January 6, 1961 when the notification was in force. The employees filed applications before the Commissioner of Labour on April 25, 1961. On the date of their applications, the exemption granted to the Mills by the State Government was no longer in operation. The decision in *Birla Brothers, Ltd. v. Modak* (I.L.R. [1948] 2 Cal. 209.) has firmly established the principle that for a dispute which originated before the Industrial Disputes Act came into force but was in existence on the date when that Act became law, the Act applied to the dispute since it was in existence and continuing on that date and no question of giving retrospective effect to the Act arose. At p. 221, the learned Chief Justice, Harries, who spoke for the Court stated thus :

'In my judgment, the Act of 1947 clearly applies to the present dispute without any question arising of giving the Act any retrospective effect. It is true the dispute arose before the Act passed, but on April 1, 1947, when the Act came into force, the dispute was in existence and continuing. The employees were on strike and the strike actually continued until May 19, that is five days after the Government made the order referring the dispute to arbitration. In my judgment, the Act must apply to any dispute existing after it came into force, no matter when that dispute commenced. There is nothing in the Act to suggest that it should apply only to disputes which originated after the passing of the Act. On the contrary, the opening words of s. 10 of the Act make it clear that the Act would apply to all disputes existing when it came into force. The opening words of s. 10(1) are -

If any industrial dispute exists or is appropriate Government may, by order in writing etc.

It seems to me that these words make it abundantly clear that the Act applies to any industrial dispute existing when it came into force and, therefore, the Act applies to this dispute."

It is argued by Mr. Phadke that the notification dated April 4, 1961 withdrawing the exemption is only prospective and no retrospective effect can be given to it. This argument proceeds on a fallacy. There is no question of the notification withdrawing an exemption being prospective.

It is finally submitted by learned counsel for the Mills that the validity of the order passed by the Factory Manager dismissing the employees from service has not been determined by the High Court and that the matter must be remitted to that Court for a consideration of that question. We may point out that the Assistant Commissioner of Labour has held that the dismissal is wrongful. This conclusion is affirmed by the Industrial Court. The validity of the dismissal was therefore finally concluded in favour of the employees. There is therefore no question of the validity of the dismissal order now being considered by the High Court.

We may now summarise the conclusions reached by us as a result of the above discussion. The right of an employee to claim reinstatement on a wrongful dismissal exists de hors s. 16 of the State Act. Section 16 provides a forum for a dismissed employee to claim reinstatement but does not create a

right. The effect of an exemption granted by the notification issued under the Bombay Act is not to destroy the right but to suspend the remedy prescribed by s. 16 for enforcing that right during the period when the exemption is in force. The right can be enforced by a dismissed employee by resorting to the provisions of s. 16 of the Act provided he makes the application within six months from the date of his dismissal. In the present case, the appellants filed their applications within the period specified in s. 16 of the State Act. The High Court was in error in holding that the applications were not maintainable.

In the result the judgment of the High Court and the order of the Industrial Court are set aside and the award made by the Assistant Commissioner of Labour is restored. The appeal is allowed and the appellants will have their costs in this Court paid by respondent No. 1.

Appeal allowed.

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