Dabur (Dr. S. K. Burman) Private Ltd. Deoghar, Bihar

Vs

The Workmen

Civil Appeal No. 2568 of 1966

(J. M. Shelat, V. Bhargava, C. A. Vaidialingam JJ)

26.07.1967

JUDGMENT

BHARGAVA, J. -

The Government of Bihar, by an Order dated 14th June, 1961, referred an industrial dispute under section 10(1) of the Industrial Disputes Act, 1947 (14 of 1947) to the Labour Court, Patna, wherein the following two issues were referred :-

> "(1) Whether the discharge of the following forty workmen was proper ? If not, whether they are entitled to reinstatement and/or any other relief ?
>
> (2) Whether the above-mentioned workmen are entitled to be made permanent ?"

Subsequently, the Government issued an Order by way of corrigendum on the 19th July, 1961, substituting "Ranchi" for "Patna" in the original order of reference dated 14th June, 1961. The effect of this corrigendum was that the reference of the dispute, instead of being made to the Labour Court, Patna, came before the Labour Court, Ranchi. In the proceedings before that Court, the principal objection that was raised was that the Government, having once made a reference to the Labour Court, Patna, was not competent to cancel or withdraw that reference and could not made a competent reference of the same industrial dispute to the Labour Court, Ranchi, so that the latter Court had no jurisdiction to deal with the reference. The case before the Labour Court was also contested on various other grounds, but we need only mention those grounds which have been urged before us in this appeal. While the Labour Court was dealing with the reference, adjournments were sought on behalf of the appellant, M/s. Dabur (Dr. S. K. Burman) Private Ltd. After decision of some preliminary points by the order dated 18th August, 1962, the case was fixed for hearing on 19th November, 1962. On that date, the management again prayed for an adjournment on the ground that their local Manager, Sri. Basant Jha, had been lying ill for some time past and it was not possible for the management to prosecute their case with diligence. The Labour Court rejected this application and, thereupon, proceeded to hear the reference ex parte.

The Labour Court held that the reference to it was competent and it had jurisdiction to deal with it, even though, by the original order of reference, the Government had purported to refer the dispute to the Labour Court, Patna. On the first issue referred, the Court recorded the finding that the 40 workmen, who had been discharged, were not casual workers and that their discharge by the employers on the basis that they were casual workers was not proper. It was further held that the discharge was mala fide inasmuch as the purpose of the discharge was to avoid the liability of treating these workmen as permanent employees by preventing them from completing 240 days of

work in a year. There was the further finding that the workmen were all discharged from service as they had demanded increase in rates of wages and had also claimed that Sundays should be made paid holidays. Against this award, the appellant filed a petition under Article 226 of the Constitution in the High Court of Patna requesting that Court to quash the award. That Court upheld the award and dismissed the writ petition. Consequently, the appellant has come up to this Court by special leave against that judgment of the High Court.

Mr. Gokhale, appearing on behalf of the appellant, emphatically urged that both the Labour Court, Ranchi as well as the Patna High Court were wrong in holding that the reference to the Labour Court, Ranchi, was competent even after the reference had originally been made to the Labour Court, Patna. He relied on the principal laid down by this Court that once the Government had made a reference to a particular Labour Court, it is that Labour Court which becomes seized of that industrial dispute and, thereafter, the Government has no jurisdiction either to withdraw that reference or cancel it. In this case, however, as is clear from the judgment of the High Court, the question that arose was entirely different. The High Court has clearly held that this was not a case where the Government either withdrew or cancelled the reference to the Labour Court, Patna. The High Court has held that, from the facts stated by the appellant in the writ petition filed in that Court, it appeared that the alteration in order of reference was a mere correction of a clerical error, because, by mistake, Patna had been mentioned in place of Ranchi in the first notification. The second notification merely corrected that mistake. Mr. Gokhale wanted us to hold that the High Court was wrong in its view that the Government had merely made correction of a clerical error and that we should accept the submission on behalf of the appellant that, in fact, the State Government had first intentionally referred the dispute to the Labour Court, Patna, and issued the corrigendum only when the Government decided that the reference should go to the Labour Court, Ranchi and not Labour Court, Patna, because Labour Court, Patna had no jurisdiction to entertain the reference. We are unable to accept this submission made on behalf of the appellant. The High Court drew an inference from the facts stated in the writ petition filed by the appellant itself that this was a case of mere correction of a clerical error. This finding recorded by the High Court on the basis of the facts given in the writ petition is not now open to challenge in this special appeal, particular because even a copy of that writ petition has not been made a part of the paper-book before us. We cannot see how any objection can be taken to the competence of the State Government to make a correction of a mere clerical error. The finding that it was a clerical error means that the Government in fact intended to make the reference to the Labour Court, Ranchi; but while actually scribing the order of reference, a mistake was committed by the writer of putting down Patna instead of Ranchi. Such a clerical error can always be corrected and such a correction does not amount either to the withdrawal of the reference from, or cancellation of the reference to, the Labour Court, Patna. The High Court was, therefore, right in rejecting this contention on behalf of the appellant.

On merits, Mr. Gokhale wanted to urge only two points before us. One was that the Labour Court committed a manifest error of law apparent on the face of the record in holding that the workmen concerned were not casual workers. The judgment of the High Court, however, shows that before that Court it was nowhere urged or argued that any such error of law apparent on the face of the record had been committed by the Labour Court. What was urged before the High Court was that, even on the ex parte evidence or record, the Labour Court ought to have held that the workmen were mere casual labourers. The High Court was right in holding that this point urged on behalf of the appellant essentially raised a question of fact only and that Court, in its jurisdiction under Article 226 of the Constitution, could not interfere on such a question of fact. Since no submission was made before the High Court that the finding of the Labour Court that the workmen are not casual labourers suffers from any manifest error of law apparent on the face of the record, the appellant is

not entitled to raise this point in this special appeal before us. On the finding actually recorded by the Labour Court and upheld by the High Court, the order of the Labour Court directing reinstatement of these workmen is fully justified, so that the order made by the Labour Court, insofar as it is against the interest of the appellant, is correct and must be upheld. In view of this position, it is unnecessary to go into the question whether the Labour Court was or was not right in recording the finding as to mala fides.

The only other point urged was that the Labour Court should not have proceeded ex parte when material was placed before that Court on behalf of the appellant to show that it local Manager, Sri. Basant Jha, was in fact lying ill. The question whether an adjournment should or should not have been granted on this ground was in the discretion of the Labour Court. Even the order by which the Labour Court rejected that application for adjournment is not before us and, consequently, it cannot be held that the Labour Court committed any such error in rejecting the application for adjournment and proceeding ex parte as would justify interference by this Court.

The appeal fails and is dismissed with costs.

Appeal dismissed.s

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