Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd.

Vs

The Workmen & Anr.

Civil Appeal No. 501 of 1966

(M. Hidayatullah, V. Bhargava, C. A. Vaidialingam JJ)

18.09.1967

JUDGMENT

VAIDIALINGAM, J. -

This appeal, by the Management concerned, by special leave, is directed against the judgment of the Mysore High Court, date October 23, 1964, and declining to issue a writ of prohibition, restraining the second respondent, the Industrial Tribunal, Bangalore-1 from proceeding with the adjudication, in I.D. No. 8 of 1963. The short facts, leading up to the State of Mysore, making the reference, which is the subject of adjudication, by the second respondent, in I.D. No. 8 of 1963, are as follows :

The appellant is a textile mill, in Bangalore, manufacturing cotton, silk and cotswool piece-goods. After the Industrial Employment (Standing Orders) Act, 1946 (Act XX of 1946) (hereinafter to be referred to, as the Standing Orders Act), came into force, the standing orders of the appellant's establishment were duly drawn up, and certified by the authorities. Those standing orders, among other things, related to the question of leave, to be granted to the workmen. By its order, dated August 2, 1955, the Government of Mysore referred to the Industrial Tribunal, Bangalore, for adjudication, an industrial dispute, raised by certain categories of workmen, of the appellant company. That reference was numbered as I.C. No. 11 of 1955. The dispute that was referred, was

> "Whether the Standing Orders filed by the Management and now certified by the certifying authority be modified as a modification to the existing Standing Orders as amended by the employees through their association in the light of the views and as indicated in the Annexure to this notification."

The Industrial Tribunal, Bangalore, made an award, Exhibit M-6, on September 25, 1956, whereby the Tribunal directed the addition of certain clauses, in the Certified Standing Orders of the appellant company. There is no controversy, that paragraphs 50 to 70, of Exhibit M-6, deal with privilege leave, sick leave and casual leave, which could be availed of, by the workmen. Exhibit M-5 is a copy of the Certified Standing Orders of the Management company. After the amendments, effected to those Standing Orders, in pursuance of the award, Exhibit M-6, clauses 1, 2, 3 and 4 of Order 9, of Exhibit M-5 deal with festival holidays, leave with wages, wages, medical leave and casual leave, respectively. The award, Exhibit M-6, after publication in the State Gazette, on October 18, 1956, came into operation on November 18, 1956, under the provisions of s. 19(3), read with s. 17A(1), of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter referred to, as the Act).

The first respondent began to make certain claims, for revision of the provisions, regarding leave, and as the appellant was not willing to concede those claims, the first respondent appears to have approached the State Government, to refer the dispute, regarding this matter, to the Tribunal, for adjudication; but, the State Government, by its order, Exhibit M-2, dated October 10, 1962, declined to refer the matter for adjudication. In the said order, the Government is of the view that, as compared with leave facilities, provided for, in similar major industries, in Bangalore, the leave facilities then granted by the Management to the workmen of the appellant company, cannot be considered to be inadequate, and, therefore, the issue raised, by the workmen, does not merit reference, for adjudication. But, nevertheless, later on, the State Government, referred for adjudication, by its order, date March 20, 1963, the following matters, to the second respondent :

> "Whether the workmen of Bangalore Woollen, Cotton & Silk Mills Co. Ltd., are entitled to the following leave benefits :
>
> (a) Privilege leave for one month in a year with pay.
>
> (b) Casual leave of 12 days in a year with pay.
>
> (c) Sick leave of 30 days in a year with full pay less E.S.I. benefits.

If not, to what reliefs they are entitled to"

This reference, out of which the present proceedings arise, was registered as I.D. No. 8 of 1963. From the questions, referred to above, it will be seen that the dispute, that was referred, for adjudication, almost exclusively relates to the question of privilege leave, casual leave, and sick leave, which are already provided for, in the Standing Orders, of the management, Exhibit M-5.

The first respondent has place its demands, in respect of this question, before the Industrial Tribunal, and the Management have also placed their points of view, on these matters. It is not necessary to refer to the pleas made, either by the appellant or the first respondent, regarding the merits of the claim, which has not been adjudicated, by the Industrial Tribunal. But the Management raised two preliminary objections, to the jurisdiction of the Industrial Tribunal, to entertain and adjudicate upon the questions, referred by the State Government. Those two preliminary objections were to the effect :

> (i) The award, Exhibit M-6, dealing with leave and other facilities, not having been terminated by the first respondent, by issue of a notice, as contemplated under s. 19(6) of the Act, continues to be in force and, therefore, the question of leave cannot form the subject matter of adjudication.
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> (ii) The question regarding leave facilities, having been provided for, in the Certified Standing Orders, framed by the company under the Standing Orders Act, any modifications to those provisions, as is now sought to be done, can only be in the manner provided for, in the Standing Orders Act, and cannot form the subject of adjudication, by the Industrial Tribunal, under the Act.

The Workers' Union met these contentions by stating that the various representations, made by it, to the Management, as well as the presentation of a Charter of Demands, amounted to notice of termination of the Award and that notwithstanding the Standing Orders Act, when an industrial dispute was raised, regarding matters which might be covered by the Standing Orders of the

Management, by the workmen and such a dispute was referred, for adjudication, under the Act, by the Government concerned, the Tribunal had full jurisdiction to adjudicate upon that dispute.

These two questions have been answered, by the Industrial Tribunal, against the Management, by its order, dated August 26, 1963. The High Court, in its order under attack, has also agreed with the findings, recorded by the Tribunal. In considering the first objection, both the Tribunal and the High Court have gone into the question as to whether the notice, contemplated under s. 19(6) of the Act, should be in writing, or, whether it can be oral, and have expressed the concurrent view that such notice can be oral also; but the ultimate finding, recorded by the Tribunal, and accepted by the High Court, is that the various correspondence, that passed between the Management and the Union, will clearly show that the Union has terminated the Award. On the second objection the Tribunal, whose findings have, again, been accepted by the High Court, has held that the scope of the Standing Orders Act is very limited, and that there is really no conflict, between the Act and the Standing Orders Act. It is the further view of the Tribunal that, in spite of the provisions, contained in the Standing Orders, framed by the company, under the provisions of the Standing Orders Act, it is nevertheless open to a Tribunal, to adjudicate upon those matters, when the question is referred to it, as an industrial dispute, under the Act.

In this appeal, on behalf of the Management, Mr. H. R. Gokhale, learned counsel, has raised the same two contentions, relating to the jurisdiction of the Industrial Tribunal, to adjudicate upon the dispute, in question. In respect of the first objection, that the award, Exhibit M-6 has not been terminated by a written notice, under s. 19(6) of the Act, counsel urged that the views, expressed by both the Tribunal, and the High Court, that there could be a notice, given even orally terminating the award, is not correct.

No doubt, the findings, in this regard, that there can be an oral notice, given under s. 19(6) of the Act, has been sought to be supported, by Mr. B. R. L. Iyengar, learned counsel, appearing, for the Union. In our opinion it was not really necessary either for the Tribunal or for the High Court, to embark upon, and express an opinion, on the question, as to whether the notice of termination of an award, under s. 19(6), of the Act, can be oral, because, so far as we can see, the Union has not raised any plea that the termination of the award, Exhibit M-6, in this case, has been brought about, by its giving an oral notice to the Management. On the other hand, the specific plea of the Union, on this aspect, was that the various representations, made by it, to the Management, as well as the presentation of the Charter of Demands, amounted to a notice of termination of the award. The various representations and the Charter of Demands, referred to, by the Union, are the representations and charter given in writing, to the Management, on various matters. Therefore, we express no opinion, in this case, as to whether the termination of an award, can be brought about by an oral notice being given, under s. 19(6), of the Act.

We will then consider the question, as to whether there has been a termination of the award, Exhibit M-6, in the manner pleaded by the Union. It cannot be over emphasized that an intimation, claimed to have been given, regarding the termination of an award, must be fixed with reference to a particular date, so as to enable a Court to come to the conclusion that the party, giving that intimation, has expressed its intention to terminate the award. Such a certainty regarding date is absolutely essential, because, the period of two months, after the expiry of which, the award will cease to be binding on the parties, will have to be reckoned, from the date of such clear intimation. It is also necessary to state that, in this case, the High Court and the Tribunal, have proceeded on the basis that the decision of this Court, in The Workmen of Western India Match Co. Ltd. v. The Western India Match Co. Ltd. ([1963] 2 S.C.R. 27), supports the proposition that an inference of an

intention to terminate an award or a settlement, can be gathered from the various correspondence that passed, between the Management and the Union. That decision, in our opinion, does not lend any support to such a view. From the facts of that case, it is seen that there was a settlement, between the parties, on April 29, 1955, and there was a Charter of Demand, given by the workmen, on January 25, 1957. On January 14, 1953, the Government of West Bengal, referred, to the Industrial Tribunal concerned, for adjudication, the demands made by the workmen. Earlier to that date, on March 29, 1957, the management had sent a reply to the Union that the Charter of Demands, of January 25, 1957, could not be considered, inasmuch as the settlement of April 29, 1955, had not been validly terminated, under the Act. In answer to the communication, the Union wrote, on April 8, 1957, that the various representations, made by it, to the management and the representation of the charter of demands, amounted to a notice of termination of the settlement. In dealing with this point, it will be seen that this Court observes that no formal notice, as contemplated by s. 19(2), of the Act, has been given by the Union. But, this Court, ultimately, held that though no such formal notice was given, the letter of April 8, 1957, written by the Union, could itself be construed as notice, within the meaning of s. 19(2), and therefore the Tribunal had jurisdiction to adjudicate upon the claim, as the reference was made, by the State Government, long after the expiry of two months, from April 8, 1957. It will therefore be seen, that this Court treated the letter, of April 8, 1957, written by the Union, as amounting to a notice of intention to terminate the settlement. But, in the instant case, we specifically desired Mr. Iyengar, counsel for the Union, to state which was the particular letter, or representation, made by the Union, which could be considered to amount to a notice of termination the award. Learned counsel state that Union, to the Management, as amounting to a notice, given by his client, intimating its intention to terminate the award, Exhibit M-6.

In view of this stand, taken by the counsel for the Union, we are not referring to the events that took place, subsequent to this date, viz., June 26, 1961, excepting to state that, ultimately, the State Government, referred the present dispute, for adjudication, to the Industrial Tribunal. We have already stated that the award. In I.C. No. 11 of 1957, remained in operation, till November 18, 1957, under s. 19(3), of the Act, but notwithstanding the expiry of the period of operation, of the award, under sub-s. (3), the said award will continue to be binding on the parties, unless it is terminated, in accordance with s. 19(6), of the Act. Even during the period, when this award was in operation, i.e., within November 18, 1957, the workers made certain demands, as mentioned in their letter, dated October 28, 1957. The demands referred to, in the said letter, related to various claims, made by the Union. In particular, item 3, of Annexure A, to the said letter related to certain claims, made by the several employees, regarding privilege leave and casual leave. On September 19, 1958, there was a settlement, arrived at, between the parties, under Exhibit M-3. It is only necessary to note clause 5 of this agreement, whereby the Staff Association withdrew the demands, in respect of the various claims, made on October 28, 1957, including the claim made, for privilege leave and casual leave. The Staff Association also agreed that, for a period of three years, commencing from January 1, 1958, they would not raise any dispute regarding any of the subjects covered by Annexure A to their original demands, which included also the claim for privilege leave and casual leave. No doubt there is a reservation, regarding gratuity, with which we are not now concerned. Therefore, it will be noted that though a claim was made, in respect of leave, on October 28, 1957, the Union withdrew that claim, under the agreement, M-3 and they also agreed not to make any demands, for three years. This is a settlement, arrived at, by the parties, and this settlement will be binding on them, unless it is terminated, in accordance with s. 19(2) of the Act.

On August 14, 1961, the Union issued a notice, Exhibit W-3, to the Management, under s. 19(2) of the Act, stating that the settlement, of September 19, 1958, will stand terminated, and cease to be

binding, after the expiry of two months, from the date of receipt of that letter, by the Management. It is in between September 19, 1958, the date of the settlement M-3 and August 14, 1961, the date of the notice, W-3, terminating the settlement, that the letter, date June 26, 1961, relied on by Mr. Iyengar, as amounting to a notice of termination of the award, was sent by the Union. No doubt, in this letter, the Union has, among other matters, claimed leave facilities, as stated therein. That claim related to privilege leave, casual leave and sick leave. Even this letter does not, as such, intimate the Management, of the Union's intention to terminate the award, Exhibit M-6. Mr. Iyengar, learned counsel, urged that the very fact that the Union has made claims, in this letter, regarding leave facilities which are inconsistent with the award, Exhibit M-6, will clearly show that the Union is not standing by the award. From the facts, mentioned above, it will be clearly seen that the parties have entered into a settlement, on September 19, 1958, and one part of the agreement is that the Union is withdrawing its claim regarding leave facilities and it has also agreed not to raise any disputes, regarding that matter, for a period of three years. This settlement is binding, on both the Management and the Union, and will continue to be binding, until it is terminated, in accordance with s. 19(2) of the Act. Notice of intention to terminate the settlement was given on August 14, 1961, and, under s. 19(2) of the Act, the settlement will cease to be binding, after the expiry of two months, i.e., on October 14, 1961. This letter, written on June 26, 1961, long before the issue of the notice, on August 14, 1961, terminating the settlement, under s. 19(2), is in our opinion, of no avail. Unless the settlement is terminated, the Union had no right to make any demands regarding leave facilities, as it has purported to do, on June 26, 1961. Therefore, in our opinion, this letter cannot be considered to be a notice, given by the Union, expressing its intention to terminate the award. Apart from the fact that it does not convey any such intention, it is also invalid, inasmuch as it has been given, even before the settlement was terminated. From this, it will follow that when there is a subsisting award, binding on the parties, the Tribunal will have no jurisdiction to consider the same points, in this reference.

Normally, this conclusion, arrived at, by us, may be enough to dispose of this appeal; but the second question, relating to the jurisdiction of the Tribunal, functioning under the Act, to adjudicate upon a dispute, which may result in the modification of the Standing Orders, framed by the management, under the Standing Orders Act, has also been adjudicated upon by the Tribunal, and the High Court and correctness of those findings, have been canvassed, before us. If, later on, there is a proper reference to the Tribunal, the same questions may arise, for consideration; and therefore, we shall proceed to express, our views on that aspect also

The contention of Mr. Gokhale, learned counsel for the appellant, is that the Management, after the coming into force of the Standing Orders Act, had framed standing orders which have been certified, by the Certifying Officer. Those Standing Orders, originally framed, made provision for the grant privilege leave, sick leave, casual leave and other allied matters. The Award, Exhibit M-6, dealt with the claim of the workmen, in this regard, and gave certain directions. Those directions have been incorporated, by the Management, by amending the Standing Orders and the provisions regarding leave, etc., are all to be found in those Standing Orders Exhibit M-5. The Standing Orders Act, as the various provisions therein will show, is a self-contained statute, imposing obligations on the Management and also conferring rights, on the parties concerned, for the framing of and effecting modifications, in the Standing Orders. The manner in which the modification is to be sought, is also indicated, in the Act.

In this connection, learned counsel referred us to the interpretation, placed upon item 5, in the Schedule to the Standing Orders Act, by this Court, in The Bagalkot Cement Co. Ltd. v. R. K. Pathan ([1962] Supp. 2 S.C.R. 697), that it is open, to the authorities functioning under the Standing

Orders Act, to make substantive provision for the granting of leave and holidays, along with conditions in respect of them. Mr. Gokhale pointed out that the Standing Orders Act placed an obligation, on the management, to have the Standing Orders certified; it imposes a duty on the Certifying Officer and the Appellate Authority, to adjudicate upon the reasonableness and fairness of the Standing Orders; a right has been given, both to the workmen, and the management, to apply to the Certifying Officer to have the Standing Orders modified; there is provision for appeals; penal provisions are provided, for failure to submit draft standing orders, or for modifying standing orders, otherwise than in accordance with s. 10; and, finally, jurisdiction is given under s. 13-A, to the Labour Court, constituted under the Standing Orders Act, to entertain any dispute the may be referred to it, by the employer or workmen, regarding the application, or interpretation of a standing order. These provisions, according to the learned counsel, clearly show that the Standing Orders Act is a self-sufficient statute, by itself and if any provision made, in respect of leave, in any Standing Orders, requires modification, the only procedure to be adopted by the party concerned, is as indicated in the Standing Orders Act. In respect of all matters which are to be so dealt with, regarding industrial establishments, to which the Standing Orders Act applied, the Industrial Tribunal, constituted under the Act, will have no jurisdiction to entertain a claim or adjudicate upon the same. When two statutes, as in this case, the Act and the Standing Orders Act, more or less deal with some common matters, the proper and reasonable view to hold will be that the Act can be invoked only in respect of industrial establishments which are not governed by the Standing Orders Act. Mr. Gokhale also pointed out that under such circumstances, the remedy to be adopted is the one, under the Standing Orders Act; and this is also to be deduced from the views, expressed by this Court, in certain decisions, to which he has drawn our attention.

Mr. Iyengar, learned counsel for the Union, on the other hand, points out that the Act and the Standing Orders Act, have been enacted for different purposes; the scope of an adjudication, under the Standing Orders Act, counsel points out, is only regarding the fairness or reasonableness, of standing orders. The Standing Orders, certified under the Standing Orders Act, are no doubt binding on the parties and, in individual cases, it may be possible for a workmen to apply for a modification of a particular Standing Orders or raise a question, regarding the application or interpretation of a Standing Orders, and refer it to the Labour Court. But, counsel points out, that does not mean that there cannot be a larger question, by way of an industrial dispute, raised by the Union, or the workmen, as a body, concerned, which will necessitate an adjudication, by the Industrial Tribunal, under the Act.

In this connection, counsel drew our attention to the fact that the Act and the Standing Orders Act, were amended by a common Act - the Industrial Disputes (Amendment And Miscellaneous Provisions) Act, 1956 (Act KXXVI of 1956). This Amending Act made provision for, adjudication, by the certifying authority and the appellate authority under the standing Orders Act, upon the reasonableness and fairness of standing orders. It made a provision, giving a right to a workmen also to apply to the Certifying Officer, to have the standing orders modified. Section 13A, regarding reference being made to the Labour Court, by a workman or an employer, in respect of the application, or interpretation of a standing order, was also incorporated, by the Amending Act. Side by side with these amendments, made to the Standing Orders Act, various amendments were effected, in the Act also. Provisions regarding the constitution of the Labour Court, as well as the Industrial Tribunals, and matters over which they have jurisdiction, as enumerated in the particular Schedules to that Act, were also made. An adjudication, made by the Labour Court, or the Industrial Tribunal, is binding on the parties, referred to, in s. 18 of the Act. No doubt s. 13A, of the Standing Orders Act, enables an employer or a workmen, to refer to the Labour Court, any question relating to the application, or interpretation, of a standing order. But the same Amending Act has

incorporated, in the Second Schedule to the Act, item 2, relating to 'the application and interpretation of standing orders', over which the Labour Court has jurisdiction to adjudicate upon. Similarly, counsel points out, the Industrial Tribunal, constituted under the Act, has been given jurisdiction to deal with matters, referred to, in the Second and Third Schedules to the Act. 'Leave with wages and holidays' is item 4, of the Third Schedule to the Act, over which jurisdiction has been given only to the Industrial Tribunal. If the contention of the appellant is accepted, it will mean that in respect of a similar question, covered by the standing orders framed by a company, the Labour Court, which is denied jurisdiction, under the Act, will be competent to adjudicate upon the same. Therefore, counsel points out, that the matters, covered by the standing orders, in respect of the various items contained in the Schedule to the Standing Orders Act, can no doubt, be dealt with, in accordance with the provision contained therein; but a general or a larger controversy regarding those matters, can certainly form the subject of an 'industrial dispute', as that expression is defined in the Act, and, if that is so, the Industrial Tribunal will have jurisdiction to adjudicate upon those matters, when a reference is made, by the State Government.

We are in agreement with the contentions of Mr. Iyengar, on this point. The scheme of the Standing Orders Act, has been dealt with, by this Court, in three of its reported decisions : Guest, Keen, Williams, Private Ltd. v. P. J. Sterling ([1960] 1 S.C.R. 348); The Bagalkot Cement Co. Ltd. v. R. K. Pathan ([1962] Supp. 2 S.C.R. 697); and Salem Electricity v. Employees ([1966] 2 S.C.R. 498). Therefore, we do not think it necessary to cover the ground over again. Those decisions have also noted the amendments effected to the Standing Orders Act, by the Amending Act XXXVI of 1956. Those are the decisions, which have been referred to, by Mr. Gokhale, in support of his contention that the observations made, therein, will show that after the amendment of the Standing Orders Act, in 1956, no industrial dispute can be raised, under the Act, in respect of the matters covered, by the Standing Orders Act, and that the remedy of the parties concerned, will only be, as laid down, therein. On a perusal of those decisions, we do not find that any such proposition, has been laid therein. On the other hand, we will presently show, that in the latest decision of this Court, the question, as to whether there can be an industrial dispute, raised, which can form the subject of an adjudication, under the Act, has been specifically left open.

In Guest, Keen, Williams, Private Ltd. v. P. J. Sterling ([1960] 1 S.C.R. 348), the Management had framed standing orders which had been certified, under the Standing Orders Act. On the basis of those standing orders, certain workmen were voluntarily retired, at the age of 55 years, and the dispute, regarding this matter, was referred to the Industrial Tribunal, under the Act. The order of the Management was set aside, and reinstatement of some of the workers, was ordered. An objection was raised, on behalf of the Management, before this Court, that the reference, by the Government, itself, was bad, on the ground that s. 7 of the Standing Orders Act makes the standing order binding, between the employer and his employees, and, till those standing orders, are modified, the parties, will be governed by those standing orders, and the legality of the action, taken by the Management, on the basis of the standing orders, cannot form the subject of a reference, under the Act. But this Court, after referring to the scheme of the Standing Orders Act, observed the before the Standing Orders Act was amended, in 1956, if the employees wanted to challenge the reasonableness, or fairness of any of the standing orders, the only course was to raise an industrial dispute in that matter, but that this position was altered, by the amendments made, to the Standing Orders Act, by which had been made obligatory, on the part of the Certifying Officer, and the Appellate Authority, to adjudicate upon the reasonableness and fairness of a standing order, and a right had been given to the workmen also, to apply for the modification of any standing orders. This Court further observed, at p. 358 :

> "The standing orders certified under the Act no doubt become part of the terms of employment by operation of s. 7; but if an industrial dispute arises in respect of such orders and it is referred to the tribunal by the appropriate government, the tribunal has jurisdiction to deal with it on the merits."

According to Mr. Gokhale, these observations will clearly indicate that the view of this Court is that prior to 1956, the questions regarding standing orders, could form the subject of an industrial adjudication, under the Act, and he wants us to draw the inference that, after 1956, the view of this Court is, that the jurisdiction of the Industrial Tribunal, in such matters, has been taken away. We are not inclined to accept this contention of the learned counsel, for, this Court, in the above decision, had no occasion to consider the provisions of the Standing Orders Act, in relation to the Act. In fact, there is no reference at all to the amendments effected in 1956, to the Act.

The next decision is The Bagalkot Cement Co. Ltd. v. R. K. Pathan ([1964] 2 S.C.R. 498). In that decision, this Court had to consider, again, the effect of the Standing Orders Act, prior to it amendment, in 1956. No doubt the amendments, effected in 1956, are also adverted to when considering the scheme of the Standing Orders Act. In particular, the scope of item 5, of the Schedule to the Standing Orders Act, to the effect 'conditions of, procedure in applying for, and the authority which may grant, leave and holidays', came up for consideration. The contention, on behalf of the Management, appears to have been that the jurisdiction, conferred on a Certifying Authority, under this clause, does not empower the said Authority to deal with the substantive question of the extent and quantum of leave and holidays. It was further contended that the said clause only required the Standing Orders to provide for conditions, subject to which, leave and holidays could be granted, as well as the procedure, in respect thereof. In short, it was contended that the quantum of leave and holidays, to be granted to workmen, was outside the privies of the Schedule to the Standing Orders Act and, as such, they could not be included by the Certifying Officer, or the Appellate Authority, in the Standing Orders. This contention was rejected, by this Court, and it was held that the substantive provisions, for the granting of leave and holidays, along with conditions in that respect, could be provided for, in the Standing Orders, under cl. 5, of the Schedule. It will be noted that this decision was also concerned, solely with the question of the jurisdiction of the Certifying Officer and the Appellate Authority, under the Standing Orders Act, in relation to the standing orders, which came up for consideration, before them. In this decision also this Court did not have occasion to consider whether those matters could form the subject of an industrial adjudication, under the Act.

Mr. Gokhale, no doubt, relied upon the observation, at p. 710, to the following effect :

> "It is not disputed that the claim for leave and holidays can become the subject matter of an industrial dispute and if such a dispute is referred for adjudication to an Industrial Tribunal, the Tribunal can fix the quantum of holidays and leave. What the Tribunal can do on such reference is now intended to be achieved by the Standing Orders themselves in respect of industrial establishments to which the Act applies. We have noticed that the Certifying Officer as well as the appellate authority are, in substance, industrial authorities and if they are given power to make provision for leave and holidays an they undoubtedly are given power to provide for termination of employment and suspension or dismissal for misconduct, there is nothing inconsistent with the spirit of the Schedule or with the object of the Act."

and attempted to persuade us to hold that in respect of all the matters, covered by the standing

orders, exclusive jurisdiction is vested only in the authorities, constituted under the Standing Orders Act, Though, prima facie, the above observations may appear to give some support to this contention of Mr. Gokhale, in our opinion, those observations must be limited to the question that this Court was considering, in that case, which, again, was with reference to the powers of the authorities, under the Standing Orders Act, as well as the rights of the parties, with reference to those standing orders. But, at any rate, as we shall presently show, in the later decision, the question of jurisdiction of the Industrial Tribunal, in such matters, has been specifically left open.

We then come to the decision of this Court, in Salem Electricity v. Employees ([1946] 2 S.C.R. 498). In that case, the appellant had framed standing orders and got them certified, in or about 1947, under the Standing Orders Act. In 1960, the appellant made an application, before the Certifying Officer, for amendment of certain standing orders. By virtue of the proposed amendment, the management wanted to have two sets of standing orders, to govern the relevant terms and conditions of its employees. Both the Certifying Officer, as well as the Appellate Authority, declined to modify the standing orders, as desired by the management. The question that arose for decision was a short one, as to whether the rejection of the application of the management, was justified or not. This Court, again considered the scheme of the Standing Orders Act, both before and after its amendment in 1956, and held that in regard to the certification of the standing orders, the Standing Orders Act provided for a self-contained code, and ultimately held that the refusal of the Certifying Officer and the Appellate Authority, to modify the standing orders, was perfectly justified.

Here, again, this Court had no occasion to consider the position of standing orders, framed under the Standing Orders Act, in relation to an industrial dispute that may be raised, and referred for adjudication, under the Act. In fact, that no decision was intended to be given, on that aspect, is made clear by the learned Chief Justice, when he observes, at p. 506 :

> "It may be that even in regard to matters covered be certified Standing Orders, industrial disputes may arise between the employer and his employees, and a question may then fall to be considered whether such disputes can be referred to the Industrial Tribunal for its adjudication under section 10(1) of the Industrial Disputes Act. In other words, where an industrial dispute arises in respect of such matters, it may become necessary to consider whether, notwithstanding the self-contained provisions of the Act, it would not still be open to the appropriate Government to refer such a dispute for adjudication. We wish to make it clear that our decision in the present appeal has no relation to that question. In the present appeal, the only point which we are deciding is whether under the scheme of the Act, it is permissible to the employer to require the appropriate authorities under the Act to certify two different sets of Standing Orders in regard to any of the matters covered by the Schedule."

None of the above decisions lend support to the contentions of the learned counsel for the appellant that, after the amendment effected in 1956, to the Standing Orders Act, the Industrial Tribunal will have no jurisdiction, under the Act, to adjudicate upon any disputes in relation to matters, covered by the Standing Orders, framed under the Standing Orders Act.

Further, accepting the contention of the learned counsel for the appellant, will be to practically wipe out the existence of the Act, so far as industrial establishments, governed by the Standing Orders Act, are concerned. The Legislature, in 1956, amended, by the same Act viz., Act XXXVI of 1956, both the Act and the Standing Orders Act. Schedules were also incorporated in the Act, and, in particular, the same item, which is referred to in s. 13A, of the Standing Orders Act, is again

referred to, as item 2, of the Second Schedule to the Act, over which the Labour Court has jurisdiction. Item 5, of the Schedule to the Standing Orders Act, as interpreted, by this Court, gives jurisdiction to the authorities under that Act, to frame standing orders, with reference, not only to the procedure for grant of leave and holidays, but also in respect of the quantum of leave, and allied matters. The Legislature, in time 4 of the Third Schedule to the Act, dealing with 'leave with wages and holidays', has conferred jurisdiction, in that regard, on the Industrial Tribunal. The Standing Orders Act which, has for its object, the defining, with sufficient precision, the conditions of employment, under the industrial establishments and to make the said conditions known to the workmen employed by them, has provided more or less a speedy remedy to the workman, for the purpose of having a standing orders modified, or for having any question relating to the application, or interpretation of the standing order, referred to a labour Court. But there is no warrant, in our opinion, for holding that merely because the Standing Orders Act is a self-contained statute, with regard to the matters mentioned therein, the jurisdiction of the Industrial Tribunal, under the Act, to adjudicate upon the matters, covered by the standing orders, has been, in any manner, abridged or taken away. It will always be open, in a proper case, for the Union or workmen to raise an 'industrial dispute', as that expression is defined in s. 2(k) of the Act, and, if such a dispute if referred by the Government, concerned, for adjudication, the Industrial Tribunal or Labour Court, as the case may be, will have jurisdiction to adjudicate, upon the same. But, it must also be borne in mind that an 'industrial dispute' has to be raised by the Union, before it can be referred and, it is not unlikely that a Union must be persuaded to raise the dispute, though the grievance of a particular workman, or a member of the Union, be otherwise well-founded. Even if the Union takes up the dispute, the State Government may, or may not, refer it to the Industrial Tribunal. The discretion of the State Government, under s. 10 of the Act, is very wide. It may be that the workmen, affected by the standing orders, may not always, and in every case, succeed in obtaining a reference to the Industrial Tribunal, on a relevant point. These are some of the circumstances for giving a right and a remedy, to the workman, under the Standing Orders Act itself, but there is no indication, in the scheme of the Standing Orders Act, that the jurisdiction of the Industrial Tribunal, to entertain an 'industrial dispute', bearing upon the standing orders of an industrial establishment, and to adjudicate upon the same, has in any manner been abridged, or taken away, by the Standing Orders Act. Therefore, on this aspect, we are in agreement with the conclusions, arrived at, by the Industrial Tribunal, and the High Court.

But, in view of our finding on the first point, that the award, Exhibit M-6, had not been terminated, it follows that the reference, made by the State Government, dated March 20, 1963, in this case, is incompetent, and the Industrial Tribunal has no jurisdiction to adjudicate upon the same, in I.D. No. 8 of 1963. In the result, the order of the High Court is set aside, and a writ of prohibition, restraining the second respondent, from proceeding with the adjudication, in I.D. No. 8 of 1963, will issue, and the appeal allowed, to that extent. Parties will bear their own costs, in this appeal.

G.C.

Appeal allowed in part.

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