Delhi Cloth and General Mills Ltd.

Vs

Shambhu Nath Mukherji and Others

Civil Appeal No. 1903 of 1970

(P. N. Shinghal, Jaswamat Singh, P. K. Goswami JJ )

03.10.1977

JUDGMENT

GOSWAMI, J. -

1.This is a fight between a Goliath and a dwarf in an industrial arena. The workman, who is the respondent before us, was "automatically struck off the rolls" by the management (appellant) on August 24, 1965. The management has been persistently fighting him for the last twelve years having lost before the Labour Court, the Single Judge of the Delhi High Court and lastly before the Division Bench of the High Court until the matter has landed on this Court on certificate.

2. The facts may briefly be stated :

> 2A. The workman was recruited as a labourer in the Store in 1951. After about six months he was promoted as a Fitter-Helper and after about one and a half years he was promoted to the post of Motion-Setter till 1964. On October 1, 1964, there was some reorganisation in the management's establishment and the post of Motion-Setter was abolished. Ordinarily, therefore, the workman would have been retrenched, but, in terms of a settlement between the management and the representatives of the workmen, no employee was retrenched. On the other hand, the management agreed to offer work "on any other suitable post". It is in that way that the management offered to the workman the job of a trainee on probation for the post of Assistant Line-Fixer (Assistant Grade 1) without loss of wages. The management found him unsuitable for this post even after extending the period of probation upto nine months and therefore, offered him the post of a fitter on the same pay which he as a Motion-Setter used to get. This officer was made by the management by a letter of July 31, 1965, which closed with the following paragraph :

In case you agree to the above proposal, then your acceptance should reach my office within two days of the receipt of this letter otherwise it will be presumed that the above proposal is not acceptable to you and as a consequence you can be retrenched from the service of the Mills.

3. The workman was on leave and this letter was received by him on August 11, 1965. It is common ground that he worked as a Trainee (Assistant Grade I) upto August 14, 1965. August 15 being a public holiday, on August 16, 1965, the workman wrote to the management to give him a further chance to show this efficiency in his job and if he failed to improve he would voluntarily tender his resignation. The workman closed his letter as follows :

> So, I hope that you will be kind to inform me without delay regarding the order served on me because I am a displace person of East Pakistan and unable to stay more without any job.

Hope to get an early reply at the address given above.

The management did not reply to this letter and the workman also did not report to the management. It appears from the letter written by the management to the workman on January 19, 1966 that -

your name has been automatically struck off the rolls under the provisions of the Standing Orders with effect from August 24, 1965, for continued absence without any intimation.

This is the only reply which the workman got from the management to his letter dated August 16, 1965. It is surprising that the management did not immediately send a reply to the workman informing its inability to agree to his proposal in which case the only alternative with the management was to retrench his service. If this were done on receipt of the workman's letter of August 16, 1965, the management could have been spared this tortuous and expensive litigation which may not affect the management but has caused immense hardship to the workman. It is a trite saying that one stitch at a time saves nine and the management could have avoided all this dispute by writing a two-line letter by offering the appropriate compensation under Section 25F of the Industrial Disputes Act, 1947 (briefly the Act).

4. Thus a dispute arose which led to conciliation and then to the Reference which resulted in an award in favour of the workman on December 21, 1967, reinstating him in service with full back wages. The Labour Court however, made it clear that "if the management wants to revert or retrench him it should do so in accordance with the rules and regulations applicable to his case after taking proper proceedings according to rules". Even this reasonable order of the Labour Court was not palatable to the management. The management therefore preferred an application under Article 226 of the Constitution before the High Court and the learned Single Judge rejected the same. A further appeal to the Division Bench met with the same fate resulting in this appeal by certificate.

5. Before the Labour Court an objection was taken questioning the Reference and the following issue was framed :

> Whether the dispute is an industrial dispute and the reference is bad ?

The Labour Court answered the issue against the management holding as follows :

> Under the newly added Section 2A of the Industrial Disputes Act, any dispute regarding discharge, dismissal, retrenchment or termination of services of even an individual workman amounts to an industrial dispute. I am therefore unable to accept the argument of the management that the dispute referred to this Court cannot be treated as an industrial dispute because it relates to an individual workman.

6. It is clear from the above that no objection was taken by the management to the effect that the case of the workman had not been espoused by other workmen or by any union. It is precisely by raising this factual question that a new point with regard to vires of Section 2A of the Industrial Disputes Act has been presented before this Court for the first time. It is true that in the grounds taken in the High Court it was stated "that Section 2A of the Industrial Disputes Act is ultra vires the powers of the Legislature under Item 22 List III to Schedule VII of the Constitution of India",

but this objection can only be, as is now made clear by the appellant, on the basis that the dispute relating to the workman had not been espoused by other workmen or by a union. A perusal of the Reference under Section 10(1)(c) does not ex facie show that it was a Reference of an individual dispute under Section 2A. That being the position, if the appellant wanted to raise this question before the Labour Court it was necessary for it to raise a triable issue by stating the facts that the dispute relating to the termination of service of the workman was not espoused by the union. Merely taking a ground in the writ application does not dispense with the requirement of stating facts in order to support the legal ground. If the ground were taken by making appropriate allegations it would have been necessary for the Labour Court to call for a report from the Administration and it would have been possible for the workman to show that his case was in fact espoused by a substantial number of workmen or by a union.

7. From the judgment of the learned Single Judge it does not appear that this question of the vires of Section 2A had been urged before him. It was only urged that Section 2A was invalid since it offended Article 14 of the Constitution.

8. Another objection was taken before the learned Single Judge "that there could be no reference in respect of the industrial dispute under Section 2A which was placed on the Statute Book after the termination of the employment of the workman in this case". The appellant has not pressed this point urged before the learned Single Judge but has addressed us on Article 14 of the Constitution. Before the Division Bench the objection under Article 14 was repeated but the question of Section 2A being ultra vires because of legislative incompetency was not urged. It may be that the point was not specifically argued because of a Full Bench decision of the Delhi High Court but that does not satisfy the basic factual requirement for the objection that it was actually a case of an individual dispute under Section 2A, unespoused by the union, which was referred by the Administration under Section 10(1)(c) of the Act.

9. We have to state the above facts in some detail as the appellant on the second day of the argument submitted before us that since he was raising the vires of Section 2A on the ground of legislative incompetency the appellant had to be heard by a Bench of seven Judges under Article 144A which was introduced by the 42nd Amendment of the Constitution. Before this constitutional question could be raised it must be manifest on the records that the question arose on the facts disclosed. As we have pointed out, there was no allegation by stating appropriate facts that the dispute of the workman had not been espoused by the union or by a substantial number of workmen. There is nothing to show on the face of the Reference that the Administration was considering the case on the basis of Section 2A of the Act. Even though recital of Section 2A was not there in the Reference, it was open to the management to raise the issue before the Labour Court as to whether in fact it was a dispute which was referred by the Administration merely on the application of the workman. On the other hand, we find that the Reference was made by the Lieutenant Governor under Section 10(1)(c) read with Section 12(5) of the Act. There is nothing to show that even before the Conciliation Officer any objection was taken by the management that it was not an industrial dispute within the meaning of Section 2(k) of the Act. Nothing prevented the management from raising such an issue even before the Conciliation Officer. We are, therefore, clearly of opinion that this is not a case where litigation can be allowed to be dragged on by allowing the management to raise this question for the first time in this Court without any basis. We, therefore, decline to accede to the request that this is at all a fit appeal for reference to a Bench of seven Judges. There is no basis for considering the provision of Section 2A in this appeal.

10. With regard to the objection on the score of Article 14 of the Constitution, it is sufficient to state

that the matter is concluded by the principle laid down by this Court in Niemla Textile Finishing Mills Ltd. v. The 2nd Punjab Industrial Tribunal [1957 SCR 335 : AIR 1957 SC 329 : 11 FJR 481 : (1957) 1 Lab LJ 460.]. In that case a challenge was made, inter alia, to Section 10 of the Act as being invalid on the ground of violation of Article 14 of the Constitution. In an exhaustive judgment, this Court repelled the contention.

11. It is submitted by Mr. Dial that in that decision this Court was only required to consider the objection raised on the score of Article 14 on a ground which is different from the one he would like to take before us. We are, however, unable to accept this submission. If this Court held Section 10 as intra vires and repelled the objection under Article 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh grounds of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by this Court holding that Section 10 of the Act does not violate Article 14 of the Constitution. The ratio decidendi of Niemla Textile Finishing Mills (supra) will apply while dealing with the objection under Article 14 of the Constitution in respect of the present reference under Section 10(1)(c) of the Act. The submission of the learned Counsel is, therefore, devoid of substance.

12. The question then arises whether the High Court was right in refusing to interfere with the award under Article 226 of the Constitution. There is no manifest error of law on the face of the award and none could be pointed out by the learned Counsel. Neither is there any error of jurisdiction. The issue before the Labour Court was one of reinstatement of the workman and the Labour Court was entitled to go into the whole question which it did. We do not find any infirmity in the award.

13. On the face of it, the order striking off the name of the workman from the rolls on August 24, 1965, is clearly erroneous. No order, even under Section 27(c) of the Standing Orders, could have been passed on that date. The clause in the Standing Orders reads as follows :

> If any workman absents for more than eight consecutive days his services shall be terminated and shall be treated having left the service without notice.

The workman last attended work on August 14, 1965. August 15 was a public holiday. He was, therefore, absent from work only from 16th of August. So even under the Standing Orders the workman was not absent for "more than eight consecutive days" on August 24, 1965. The order is, therefore, clearly untenable even on the basis of the Standing Orders. It is not necessary to express any opinion in this appeal whether "eight consecutive days" in the Standing Orders mean eight consecutive working days.

14. Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(oo) of the Act. There is nothing to show that the provisions of Section 25F(a) and (b) were complied with by the management in this case. The provisions of Section 25F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid.

15. We do not find any merit in this appeal which is dismissed with costs.

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