Shambu Nath Goyal

Vs

Bank of Baroda

Civil Appeal No. 646 of 1971

(V. R. Krishna Iyer, D. A. Desai JJ)

02.02.1978

JUDGMENT

DESAI, J. -

1. This appeal by special leave arises out of an award made by Industrial Tribunal, Chandigarh in Reference 3/C of 1970 between S. N. Goyal, workman and the management of the Bank of Baroda, by which the industrial dispute raised by the workman complaining about his illegal dismissal from service and seeking reinstatement was rejected holding that in the absence of any demand having been made by the concerned workman on the respondent bank and consequently no industrial dispute having come into existence the Government was not competent to refer the dispute to the Tribunal for adjudication.

2. S. N. Goyal, workman was a clerk in the Bank of Baroda, B.O. Civil Lines, Jullundur City. A charge-sheet dated July 31, 1965 was served upon him whereafter an inquiry into charges was held and ultimately the workman was dismissed from service, against which the workman unsuccessfully appealed. The industrial dispute arising out of the dismissal of the workman was espoused by Punjab Bank Workers' Union. On the failure recorded by conciliation officer, Government of India made the reference in the following terms :

> Whether the action of the management of Bank of Baroda in dismissing Shri S. N. Goyal, a clerk of Civil Lines Branch, Jullundur of the Bank was justified ? If not, to what relief is he entitled ?

3. The Union filed statement of claim. The Bank of Baroda in its written statement raised a preliminary objection that as no demand in respect of Shri S. N. Goyal was made upon the management, there was no industrial dispute in existence and therefore the reference made by the Government under Section 10 of the Industrial Disputes Act was incompetent. There was another preliminary objection with which we are not concerned in this appeal. The first preliminary objection found favour with the Industrial Tribunal which upheld the contention that as no demand either oral or in writing was made by the concerned workman before approaching the Conciliation Officer, there was no dispute in existence on the date of the reference and therefore the reference made by the Government was incompetent.

4. Section 2(k) defines industrial dispute as under :

> "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen,

> which is connected with the employment or non-employment or with the conditions of labour of any person;

5. A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because Section 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference' What is the connotation of these two words ? In Beetham v. Tribunal Cement Ltd. ((1960) 1 All ER 274, 279 : 1960 AC 132) Lord Denning while examining the definition of expression 'Trade dispute' in Section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed :

> By definition a 'trade dispute' exists whenever a 'difference' exists; and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.

6. Thus the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.

7. The reference in the case before us was made under Section 10(1) which provides inter alia that where the appropriate government is of opinion that any industrial dispute exists or is apprehended it may at any time by order in writing refer the matter for adjudication as therein mentioned. The power conferred by Section 10(1) on the Government to refer the dispute can be exercised not only where an industrial dispute exists but when it is also apprehended. From the material placed before the Government, Government reaches an administrative decision whether there exists an industrial dispute or an industrial dispute is apprehended and in either event it can exercise its power under Section 10(1). But in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because in its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those matters, (vide Madras State v. C. P. Sarthy (AIR 1953 SC 53 : 1953 SCR 334 : (1953) 1 Lab LJ 174)). The

Tribunal, however, referred to the decision of this Court in Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal ((1968) 1 Lab LJ 834 : AIR 1968 SC 529 : (1968) 1 SCR 515), in which this Court proceeded as ascertain whether there was in existence an industrial dispute at the date of reference, but the question whether in case of an apprehended dispute Government can make reference under Section 10(1) was not examined. But that apart the question whether an industrial dispute exists at the date of reference is a question of fact to be determined on the material placed before the Tribunal with the cautions enunciated in C. P. Sarthy's case (supra). In the case before us, it can be shown from the record accepted by the Tribunal itself that there was in existence a dispute which was legitimately referred by the Government to the Industrial Tribunal for adjudication. Undoubtedly, it is for the Government does appear to be satisfied. However, it would be open to the party impugning the reference (to contend) that there was no material before the Government, and it would be open to the Tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the Government.

8. In this case the Tribunal completely misdirected itself when it observed that no demand was made by the workman claiming reinstatement after dismissal. When the inquiry was held, it is an admitted position, that the workman appeared and claimed reinstatement. After his dismissal he preferred an appeal to the appellate forum and contended that the order of dismissal was wrong, unsupported by evidence and in any event he should be reinstated in service. If that was not a demand for reinstatement addressed to employer what else would it convey ? That appeal itself is a representation questioning the decision of the Management dismissing the workman from service and praying for reinstatement. There is further a fact that when the Union approached the Conciliation Officer the Management appeared and contested the claim for reinstatement. There is thus unimpeachable evidence that the concerned workman persistently demanded reinstatement. If in this background the Government came to the conclusion that there exists a dispute concerning workman S. N. Goyal and it was an industrial dispute because there was demand for reinstatement and a reference was made, such reference could hardly be rejected on the ground that there was no demand and the industrial dispute did not come into existence. Therefore, the Tribunal was in error in rejecting the reference on the ground that the reference was incompetent. Accordingly this appeal is allowed and the Award of the Tribunal is set aside and the matter is remitted to Tribunal for disposal according to law. The respondent shall pay costs of the appellant in this Court. As the reference is very old the Tribunal should dispose it of as expeditiously as possible.

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