ALLAHABAD HIGH COURT

Upper Ganges Electric Employees Union

Vs.

Upper Ganges Valley Electricity Supply Co.

Special Appeal No. 55 of 1955. against the decision of V. Bhargava, J. in C.M.W. No. 266 of 1953
(Mootham, C.J. and Upadhya, J.)

20.01.1955. 08.12.1955

JUDGMENT

Mootham, C.J.

1. This is an appeal from a judgment of Bhargava, J. dated 20-1-1955, dismissing a petition under Article 226 of the Constitution. The circumstances in which the petition was filed can be stated shortly.

2. On 8-11-1949, one G.E. Arratoon was appointed a general assistant on probation by the Upper Ganges Valley Electricity Supply Co. Ltd., the first respondent. On 3-4-1951 Arratoon was dismissed by the respondent company with effect from 1-6-1951.
Arratoon had however in the meantime become a member of the appellant Union which took up his case and, on 16-4-1951, applied to the Regional Conciliation Officer for a settlement of the dispute which had arisen in regard to his dismissal. The Regional Conciliation Officer was not able to effect a settlement ‘and he accordingly reported the matter to the State Government which by a notification dated 5-12-1951, referred to the State Industrial Tribunal the following questions :
Whether the services of Sri G.E. Arratoon have been wrongly terminated ? If so, to what relief, if any, is he entitled ?

3. Before this Tribunal the respondent company contended that there was no industrial dispute as Arratoon was not a workman but an officer of the Company. On 10-2-1952 the State Industrial Tribunal delivered its award. It held that Arratoon was an officer and not a workman, but that nevertheless there existed an industrial dispute as it was of opinion that it was not necessary that the person whose dismissal was the cause of the dispute between the employer and the workman should himself be a workman. The Tribunal was further of opinion that the dismissal of Arratoon was wrongful, and it directed that he be reinstated with effect from 1-6-1951. Prom this decision the respondent Company appealed to the Labor Appellate Tribunal. That Tribunal delivered its decision on 5-12-1952. It was of opinion that the State Industrial Tribunal had misdirected itself

in holding that it was immaterial whether Arratoon was a workman, but as in its opinion Arratoon was a workman it agreed with the State Tribunal that an industrial dispute existed. As however it was further of opinion that Arratoon's dismissal was not wrongful, it allowed the appeal and set aside the order of the State Industrial Tribunal directing the reinstatement of Arratoon.

4. The appellant Union then filed the petition out of which this appeal arises. It challenged the decision of the Labor Appellate Tribunal on two grounds. The first contention was that the appeal did not involve any substantial question of law and was therefore incompetent, the second contention was that, if the appeal were competent, the questions whether Arratoon was a workman and whether his dismissal was wrongful were questions of fact, and consequently outside the jurisdiction of the Labor Appellate Tribunal. The learned Judge rejected these submissions and dismissed the petition. The same arguments have been advanced in this Court. Mr. K.C. Saxena, who appears for the appellant Union, does not deny that the question whether an industrial dispute existed is a question of law, but what he says is that it was not a substantial question of law, because at the time when the appeal was filed there was no doubt what the law was. We do not think this argument carries the matter very far. When the State Industrial Tribunal pronounced its award the view then prevailing was that a dispute would be an industrial dispute if the subject matter of the dispute was the dismissal of a person in the service of the employers otherwise than as a workman. That view had however been overruled by a Full Bench of the Labor Appellate Tribunal in a case decided by it after the Company's appeal from the decision of the State industrial Tribunal had been filed but before that appeal was heard. In these circumstances it is clear that in the view of the Labor Appellate Tribunal the State Tribunal had committed a serious error of law. Mr. Saxena however, argues that the phrase 'substantial question of Law'appearing in Sub-Section (1) (a) of Section 7, Industrial Disputes (Appellate Tribunal) Act, 1950 must be given the same meaning as the similar phrase which appears in Section 110, Civil Procedure Code, which deals with appeals to the Supreme Court, and that in consequence the application of well settled principles of law to a particular set of facts is not a question of law which can well be described as substantial. We think that there are two answers to this argument. In the first place, we do not think; that the meaning of the word 'person'in the definition of an industrial dispute in Section 2(k), Industrial Disputes Act, 1947, could properly be described at the time this appeal was heard by the Labor Appellate Tribunal as well settled, for the previously accepted view had only very recently been reversed, and, in the second place, we are not prepared to accept the submission that the words 'substantial question of law'in the Industrial Disputes (Appellate Tribunal) Act must be given the same meaning as in the Civil Procedure Code. Section 110, Civil Procedure Code makes provision for appeals from decrees and final orders of a Court which, unless leave to appeal to the Supreme Court is granted, is a final appellate Court. Section 7, Industrial Disputes (Appellate Tribunal) Act, 1950 on the other hand, makes provision for an appeal to an appellate Court from a Court of original jurisdiction, and if learned counsel's submission be accepted, it would follow that the Labor Appellate Tribunal would have no jurisdiction in a case in which the State Industrial Tribunal had arrived at

an obviously wrong conclusion on a matter of law. We cannot think that that was the intention of the Legislature. In our opinion the requirement in Section 7(1)(a) of the Act that the appeal must involve a substantial question of law was intended to enable the appellate Labor Tribunal to dismiss summarily appeals which involved only a question of law of minor importance.

5. The second argument is that, assuming that the Labor Appellate Tribunal had jurisdiction, that Tribunal nevertheless could not consider the question whether Arratoon was a workman, or whether his dismissal was wrongful, because both questions are, it is said, questions of fact. This argument however places, learned counsel on the horns of a dilemma, for if the Labor Appellate Tribunal had no jurisdiction to examine whether Arratoon was an officer or a workman then the finding on this point of the State Industrial Tribunal that he was an officer could not be interfered with, and as a consequence on the view of the law taken by the Labor Appellate Tribunal there was no industrial dispute. If on the other hand it was open to the Labor Appellate Tribunal to consider this question (assuming it to be a question of fact) we find it difficult to see why it was not open to that Tribunal to consider afresh the question whether the dismissal of Arratoon was wrong.

6. We are however of opinion that if the Labor Appellate Tribunal had jurisdiction to hear the appeal it had jurisdiction to decide any question raised in the appeal. Sub-Section (1) of Section 7, Industrial Disputes (Appellate Tribunal) Act provides that

> "Subject to the provisions of this section, an appeal shall lie to One Appellate Tribunal from any award or decision of an Industrial Tribunal it -
> (a) the appeal involves any substantial question of law; or
> (b) the award or decision is in respect of any of the following matters, namely:" and follows a list of eight matters. The requirement of the Sub-Section is that the appeal "involves" a substantial question of law or that it is from an award or decision which is "in respect of" certain matters. Provided the requirement is fulfilled the appeal lies, and we see nothing in the Sub-Section which places any restriction on the scope of the appeal when once the Tribunal has jurisdiction.

Sub-Section (1) of Section 9 of the Act then provides that the Appellate Tribunal shall have the same powers as are possessed by a Civil Court when hearing an appeal under the Code of Civil Procedure. Those powers are to be found in Section 107 of the Code, and we are of opinion that as the Labor Appellate Tribunal has the same powers as a Court hearing a Civil Appeal it can if necessary re-examine the facts. This view finds support, we think, in the provisions of Sub-Section (7) of Section 9 of the Act which specifies the orders which the Appellate Tribunal may make, and in an unreported decision of this Court in - *'N.P. Satsangi v. Bijlighar Mazdoor Sangh, Banaras[1]',* in which the Court pointed out that there are separate provisions in the Act with regard to the maintainability of the Act and powers of the Labor Appellate Tribunal after it was seised of the case. A similar view was also, we think, taken by the Federal Court in appeals to it

under Section 205, Government of India Act, 1935. Under that section an appeal lay to the Federal Court if the High Court certified that the case involved a substantial question of law relating, inter alia, to the interpretation of the Act, and in - *'Niharendu Dutt v. Emperor*[2]*',* the Court held that once a certificate had been given by the High Court the appellant was entitled with the leave of the Court to raise any point in his own defense.

7. For these reasons we are of opinion that this appeal fails, and it is accordingly

[1] Writ Petn No 18 of 1952, D/d. 2-12-1954 (All)

[2] AIR 1942 FC 22

dismissed with costs which we assess at Rs. 100/-.

Appeal dismissed.