CALCUTTA HIGH COURT

Bilash Chandra Mitra

Vs.

Balmer Lawrie and Co., Ltd

Suit No. 2371 of 1949

(Bose, J.)

28.07.1952

JUDGMENT

Bose, J.

1. This is a suit for recovery of Rs. 4476-12-0 for arrears of salary, dearness allowance and certain bonus payable to plaintiff under an Award of a Tribunal constituted under the Industrial Disputes Act 1947.

2. The case of the plaintiff as laid in the plaint is that he had been in the employment of the defendant company for 22 years. On 1-4-1947 he was unjustly pensioned off for Trade Union activities. Thereupon an industrial dispute arose between the defendant company and the plaintiff and other employees represented by the Balmer Lawrie and Company's Employees Union and the Government of West Bengal by an order No.648-Lab. dated 10-10-1947 referred the said dispute to an Industrial Tribunal for adjudication. The Tribunal made an award directing that the plaintiff be reinstated in his employment and it further directed the defendant company to pay to the plaintiff the arrears of pay and allowances consequent to such reinstatement within months of the date on which the Award would be effective. By an order dated 22-1-1948 the Government declared the Award to be binding.

3. It is alleged that by virtue of the said Award the plaintiff came to be reinstated to his service and post and shall be deemed to be reinstated from 1-6-1947 and became entitled to his arrears of pay and allowances from that date and as the plaintiff is still in and shall be deemed to be in the employment of the defendant company he is entitled to the sum of Rs. 4476/12/- for his pay and allowance from June 1947 after giving credit for the sums paid to the plaintiff as pension during the period. The particulars of the claim are set out in para.5 of the plaint. As the defendant company failed and neglected to implement the Award and to pay the dues of the plaintiff this suit was filed on 6-7-1949.

4. The defendant company filed a Written Statement on 17-8-1949. It is stated in this Written Statement that on 1-4-1947 the defendant duly terminated the employment of the plaintiff with two months pay in lieu of notice and a payment of Rs. 31/- per month as pension and certain

reasons for the discharge of the plaintiff are set out therein. It is denied that the dispute which was referred by the Government was an Industrial dispute at all and it is submitted that the order of reference was invalid and consequently the Tribunal had no jurisdiction to make the Award. It is further denied that the Award entitled the plaintiff to claim reinstatement and pay and allowance as alleged. It is further stated that by accepting and enjoying the pension the plaintiff had waived his right to be reinstated and to receive the pay and allowances, and so the Suit should be dismissed.

5. The following Issues were raised:

1.(a) Does the plaint disclose any cause of action?

(b) Is the suit maintainable?

2. Was there any industrial dispute within the meaning of the Industrial Disputes Act which was the subject matter of the Order of Reference?

3. Is the Order of Reference and/or the Award valid?

4. Is the plaintiff to be deemed to be reinstated or was the plaintiff reinstated as the result of the Award?

5. Is the plaintiff entitled to any arrears of pay and dearness allowance on the basis of being in employment with the company?

6. Has the plaintiff waived his rights to pay and dearness allowance, if any?

7. To what relief, if any, is the plaintiff entitled?

6. A copy of the Award, an admitted brief of documents, and certain receipts for pension have been put in evidence by consent of parties. The plaintiff has also given evidence in the box. He states that he and few other employees formed the Balmer Lawrie and Company's Employees Union in July or August 1946 and he was the Vice-President of the Union. In or about October 1946 the employees submitted a charter of demands to the defendant company. After the Charter of demands was submitted he incurred the displeasure of the Accountant and on 31-3-1947 he was served with a letter intimating that he was pensioned off with effect from 1-4-1947. The company paid him salaries for April and May 1947 and since June 1947 he is and has been receiving his pension but he has not given up his right to be reinstated. The plaintiff states that it is because of his activities on behalf of the Union that he ceased to be in the good books of the Authorities and was ultimately pensioned off. He states that he had been discharging his duties smoothly for 22 years and there was no reason for his suddenly being found inefficient. Although the defendant company did not accept the Charter of the demands which was submitted originally but after the discharge of the plaintiff they accepted a revised charter of demands. The plaintiff admits that the only dispute referred to the tribunal was about the discharge and reinstatement of the plaintiff and one Shanti Mitra. The plaintiff further states that he did not write any letter himself stating that he kept his rights under the Award open, but the Union had written several letters asking for reinstatement and salary and allowances. He does not know whether the Union had written any letter stating definitely that plaintiff's rights under the Award had been kept open.

7. Mr. Niren De, the learned counsel for the defendant company has contended that the dispute purported to be referred by the Order of Reference dated 10-10-1947 was not an industrial

dispute within the meaning of the Industrial Disputes Act 1947. Mr. De argues that the alleged dispute was the dispute, if at all, between a single workman and the defendant company and as the plaintiff was a discharged employee and the origin of the dispute is the discharge itself there could not be an industrial dispute within the meaning of Section 2(k) of the Act read with Section 2(s) thereof. The said sections are as follows:

> "Section 2(k) - "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 the terms of employment or with the conditions of labour of any person.
> Section 2(s) - "Workman"means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown."

8. In the case of - '*Western India Automobile Association v. Industrial Tribunal, Bombay'*[1], Mahajan, J., made certain observations which lend some support to the proposition that a dispute between a dismissed employee and the employer relating to the dismissal itself is an industrial dispute. At page 114 the following observation appears with regard to the third illustration given:

> "An employer may dismiss a man or decline to employ him. This matter raises a dispute as to non-employment."Then again at page 116 the learned Judge made the following observations:
> "Having regard to the general words in connection with the employment or non-employment in the definition of industrial dispute, it seems clear that if there arises non-employment by reason of the termination of employment by the employer, it will be within the jurisdiction of the Tribunal to determine whether the termination was justifiable."

But the facts of the case show that the dismissal took place during other disputes which were subsisting and which had been referred to the Tribunal and consequently the dismissed employees were "workmen “within the meaning of Section 2 (S) of the Act.

9. It appears to me that there is considerable force in the argument of Mr. De that if the discharge itself originates or gives birth to the dispute then the dispute does not arise till the moment when discharge takes effect or till sometime later than the discharge and in such a case there cannot be an. industrial dispute between the employer and the' dismissed employee provided there was no other dispute existing at the time. I accept this argument of Mr. De as sound. With regard to the other contention of Mr. De that an individual dispute cannot be an industrial dispute. I think that it is equally sound. See - '*Kandan Textiles Ltd. v. Industrial Tribunal, Madras*[2]', - '*United Commercial Bank Ltd., Mathurai v. Commr. of Labour, Madras*[3]', and - '*J., Chowdhury v. M.C. Banerjee*[4]',

10. The order of reference in the present case, however, shows that the Union had taken up or espoused the cause of the plaintiff and Santimoy Mitra in regard to the dispute as to their discharge, and the Union represented these two employees in their dispute. The

[1] AIR 1949 FC 111 [3] AIR 1951 Mad 141
[2] AIR 1951 Mad 616 [4] 55 Cal WN 256

relevant portion of the order of reference is that:

> "Whereas an industrial dispute has arisen between Messrs.Balmer Lawrie and Co. Ltd. of 103 Netaji Subhas Road and Messrs.Bilash Chandra Mitra and Santimoy Mitra two of their employees as represented by the Balmer Lawrie and Company's Employees' Union......etc......"

11. Thus the case was not of a dispute between a single individual and the company but disputes of two employees represented by the Union, and taken up by the Union, had been referred to the Tribunal. The Statement filed before the Tribunal was by the Union. (See brief of documents).

12. In the case of - '*Birla Brothers Ltd. v. Modak*' an order of reference in which the wordings were "and their employees as repreSented by the Birla Brothers' Employees' Union"was held to be a valid order of reference and the dispute as to dismissal was held to be an industrial dispute. See - '*Birla Brothers Ltd. v. Modak*[5]', per Harries, C.J., and Clough, J.

13. In the case of - 'Western India Automobile Association', AIR 1949 FC 111, the Federal Court observed at pages 120-121:

> "It was contended that the reinstatement of the discharged workmen was not an industrial dispute because if the Union represented the discharged employees, they were not workmen within the definition of that word in the Industrial Disputes Act. This argument is unsound. We see no difficulty in the respondents (Union) taking up the cause of the discharged workmen and the dispute being still an industrial dispute between the employer and the workmen. The non-employment 'of any person' can amount to an industrial dispute between the employer and the workmen falling under the definition of that word in the Industrial Disputes Act."

14. Mr. P. Sanyal, the learned Advocate for the plaintiffs contended that his client was not dismissed or discharged but was merely pensioned off and so the relationship of master and servant had not been terminated or wiped out at any time and so according to the learned advocate the plaintiff remained a workman at all material fees.

15. The order pensioning off the plaintiff which was served on him on 1-4-1947 shows that the company did not dismiss the plaintiff but instead forced him to retire on a pension. The Union, however, treated it as a discharge (See Statement of Union filed before Tribunal). In my view when an employee retires or is forced to retire on a pension he cannot be said to be still in employment. He ceases to be an employee or a workman but he receives the pension in consideration of his past services.(See Oxford Concise Dictionary, page 847).

16. However, inasmuch as the Union had taken up the cause of the plaintiff it must be held that the dispute referred to the Tribunal was an Industrial dispute and the Order of Reference was consequently a valid order and the Award was also a valid Award and

[5] ILR (1948) 2 Cal 209

became binding on the parties upon the order dated 22-1-1948 being made, under Section 18, Industrial Disputes Act. The Award therefore, cannot be impeached by the defendant company.

17. The next question relates to the scope and effect of the Award. It is contended by Mr. De that as the company did not at any time reinstate the plaintiff, the plaintiff cannot claim any salary or allowance. It appears to me that the contention of Mr. De cannot be accepted. The Award declares that the plaintiff is reinstated to his previous service and post with effect from the date on which the Award would become effective and as consequence of reinstatement the plaintiff would get arrears of pay and allowances. Further, a time limit was fixed within which the amount had to be paid. It is thus clear that nothing was left to be done by the defendant company. The plaintiff was restored to his service by the Award itself and he was declared entitled to arrears of pay and allowances. There was automatic reinstatement by virtue of the Award. The award fixed the liability of the company to pay the arrears of salary and allowances. In other words a sort of decree for a sum to be calculated arithmetically had been passed against the defendant and in favor of the plaintiff.

18. The further point raised by Mr. De is that by accepting the pension since June 1947 the plaintiff had waived his rights or claim under the Award and so the plaintiff has no right to maintain the suit. The correspondence between the Union and the defendant company beginning from 4-2-1948 and ending with the letter of the defendant company dated 5-5-1949 shows that all the time the rights of the plaintiff and Santimoy under the Award were asserted but as the defendant company refused to implement the Award and declined to pay the salary and allowance the suit was filed on 6-7-1949. There is nothing to show that the plaintiff had given a go-by to the Award and accepted the pension in lieu of his claim under the Award. The defendant company has not been able to produce any letter of the plaintiff or the Union to show that the claim under the Award was given up at any time. No witness has been called by the defendant company to prove that the plaintiff had by anything that he said or did induced the defendant company to believe that the plaintiff had given up his claim under the Award. A suggestion was made in cross-examination in Questions 32 and 33 about waiver but the answers do not throw any light on the point. Unless waiver is clearly established or can be inferred from facts proved, the plaintiff's rights cannot be taken away by mere implication. It is further clear that the defendant company was not at any time misled into thinking that the plaintiff by accepting the pension had elected to forgo his rights under the Award. Even after the filing of the suit the defendant company has gone on paying the pension and the plaintiff has accepted it month by month. The filing of the suit was a definite indication that the rights under the Award had not been given up but this did not lead the company to stop the payment of pension. I hold that there was no waiver of the plaintiff's rights or claim under the Award and the suit is maintainable.

19. It was further contended by Mr. De and Mr. Ginwalla on behalf of the defendant company, that inasmuch as the rights of the plaintiff under the Award of the Tribunal and the liability incurred by the defendant company under the Award are the creatures of Statute and the Statute also prescribes the remedy for their enforcement, the remedy provided by the Industrial Disputes Act alone can be availed of and the plaintiff cannot proceed by action to enforce the rights or the

liability created by the Award. Mr. Ginwalla referred to Halsbury Vol.I page 11, para.11 and also relied on the decision of the House of Lords in - '*Cutler v. Wandsworth Stadium Ltd*[6].',

20. Mr. Ginwalla has also drawn my attention to various sections of the Industrial Disputes Act, 1947, such as Sections 15(2), 18(a) and (b), 22, 23, 29 and 34 and also to Section 20(1) of the new Act 48 of 1950 and argues that the object of the Act was to secure benefit to the public as a whole and to keep the wheels of industry going and so the only method provided for enforcing obedience to the provisions of the Act is the coercive machinery provided in Section 29 of the Act. A private individual has no right of enforcing the provisions of the Act but it is the Government alone who can do so by invoking in aid the provisions of Section 29 of the Act.

21. It is further pointed out by Mr. Ginwalla that the Federal Court also has held in - 'AIR 1949 FC 111' that the remedy for enforcing obedience was under Section 29 of the Act. It is argued that if it was open to file a suit, the Federal Court would have said so. It may be pointed out, however, in answer to this contention that the question before the Federal Court was the question of reinstatement and as no suit lies for enforcing reinstatement, this aspect of the question whether an action lies for enforcing any right under an Award of an Industrial Tribunal did not engage the attention of the learned Judges of the Federal Court nor any such question was raised. So it was observed by the Federal Court that the remedy was under Section 29 of the Act.

22. In - '(1949) AC 398 (F)' a bookmaker had instituted an action asking for declaration of his right to use a convenient space on the dog racing track in a Stadium occupied by a company known as Wandsworth Stadium Ltd., and for certain other declarations and also for injunction. The plaintiff had founded his claim on S.11, Betting and Lotteries Act (24 and 25 Geo. 5 Ch. 58) and also claimed damages for breach of statutory duty. Section 11 itself provided that if any person contravened the provisions of the section he would be guilty of an offence. Lord Simonds quoted the general rule that

> "Where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner."

It was pointed out, however, that this general rule is subject to exceptions and the Court is to consider the scope and purpose of the Statute in question and in particular for whose benefit it is intended. Lord Simonds after an analysis of the provisions of the Betting Act concluded that the primary intention of the Act was to regulate the conduct of race tracks and in particular conduct of betting operations thereon and agreed with the principle of interpretation suggested by Somervell L. J., that where an Act regulates the way in which a place of amusement is to be managed the interests of the public who resort to it may be expected to be the primary consideration of the Legislature. As the Betting Act had the public benefit for its primary object, it was held that the statutory remedy by way of penalty was the only remedy available and the general right of action was excluded.

23. The Industrial Disputes Act has for its object "the investigation and settlement, of industrial disputes"and bringing about industrial peace.

[6](1949) A.C. 398

> "An industrial tribunal can create new rights and obligations between the employer and the employees which it considers essential for keeping industrial peace, though they may

not be within the terms of any existing agreement."

The primary object is to maintain a harmonious relation between the employers and employees of industrial establishments. It is no doubt true that by this process the public is also benefited as the wheels of industry are kept going and production of goods in the country is not hampered, but the more immediate object is to remove discontentment from the minds of the employees and to bring a Sense of security in the minds of the employers. To achieve this end provision for industrial Awards is made and there is provision which makes breach of the terms of an Award an offence, punishable by fine. But this remedy by way of penalty does not, in my view, deprive the individual right of action in cases where the Award confers any personal right or benefit to particular employee or employees for the purpose of bringing about industrial peace among the whole body of employees who are espousing the cause of the particular employee or employees.

24. In the present case the plaintiff is not merely claiming the arrears of salary and allowance due up to the date of the Award but also salary and allowance which accrued due after the Award on the strength of the declaration as to reinstatement made by the Award. In other words the plaintiff's claim extends to or comprises further reliefs which flow from the Award. The Award has created a debt in favour of the plaintiff and I fail to see why payment of such debt cannot be enforced by suit. The debt has accrued from the relationship of the master and servant. It is a civil liability and for enforcement of such liability recourse can be had to an action in a civil Court (S.9, Civil Procedure Code ,) though no doubt the remedy of proceedings for enforcement of the provisions of Section 29 of the Act is also available for punishing the person so liable. Banerjee J. of this Court and Mahajan, J., of the Supreme Court have held that suits to enforce payment of monies or wages due under the Award of an Industrial Tribunal are maintainable at the instance of individuals in whose favor the Award is made. See - '*Judhisthir Chandra v. P.R. Mukherjee*[7]*',* at p.578, and -'*Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi*[8]*',* paragraph 37 at page 202, where Mahajan, J., observes as follows:

> "The Award given by an Industrial Tribunal in respect of either of bonus or higher wages, etc., is enforceable by its own force and by the coercive machinery of the Act and it is not merely a declaration of a character that furnishes a cause of action to the employee to bring a suit on its foot to recover the wages."

25. Mr. De placed reliance on the case of- '*R. v. National Arbitration Tribunal, Ex parte Horatio Crowther and Co. Ltd*[9]*.',* and submitted that this case has decided that an Industrial Tribunal has no doubt power to add to or alter the terms or conditions of the contract of service, but it has no power to restore or recreate a contract of employment which has been terminated, by directing reinstatement, and so there cannot be any question of automatic reinstatement or can any claim for salary on the basis of a subsisting contract of service arise in the case before me. But it has to be remembered that the Federal Court in 'AIR 1949 FC 111' has held that under the

[7] AIR 1950 Cal577

[8] AIR 1950 SC 188

[9](1947) 2 All England Reporter 693

previsions of the Indian Industrial Disputes Act, 1947, the Tribunal has been vested with power even to make a new contract of employment. Mahajan, J., at pages 116-117 observed as follows:

> "The strongest argument urged on behalf of the appellants was that to invest the Tribunal

> with jurisdiction to order re-employment amounts to giving it authority to make a contract between two persons when one of them is unwilling to enter into contract of employment at all......This argument overlooks the fact that when a dispute arises about the employment of a person at the instance of a trade union or a trade union objects to the employment of a certain person the definition of Industrial Dispute would cover both those cases. In each of those cases although the employer may be unwilling to do so there will be jurisdiction in the Tribunal to direct the employment or non-employment of the person by the employer. This is the same thing as making a contract of employment when the employer is unwilling to enter into such a. Contract with a particular person............It can equally direct in the case of dismissal that an employer or employee shall have the relation of employment with the other party although, one of them is unwilling to have such relation."(p.117).

The learned Judge has explained the scope and effect of 'Horatio Crowther's case' at pages 117-119 of the report.

26. If such is the wide power of the Tribunal - if the tribunal can create the relationship of employer and employee even if the employer is unwilling to do so, I fail to see why clause 14 of the Award cannot be construed to have reinstated the plaintiff to his service by the force of the Award itself. Of course it is open to the defendant Company to terminate this relationship created by the Award by giving proper notice of termination, if sufficient or justifiable reasons exist for such termination. But that has not been done in this case so far.

27. Mr. De also argued that in 'Horatio Crowther's case' (I) the Court construed the Award for reinstatement as implying a direction upon the employer to re-employ the dismissed workmen and; not that such dismissed employees had been automatically reinstated, and the words "be reinstated “in the preSent award should also bear the same construction. The learned Judges who decided Crowther's case could never conceive that there could be such a thing as an automatic reinstatement under the English law because according to them the Industrial Tribunal had no power to recreate the relationship of master and servant which had been terminated at the instance of an employer or an employee. So according to them the reasonable and perhaps the only possible construction to be put upon the Award was that it directed the employer to recreate the relation of master and servant which had been terminated by the employer. In the case before me if clause 14 of the Award had ended with the first Sentence then it might have been possible to put the same construction as was put in Horatio Crowther's case. But here the Award proceeds to state further that:

> "As a consequence to reinstatement they shall also be entitled to arrears of pay and allowance less any sum, if any, already paid. These may be paid by the company within three months of the date on which the Award becomes effective."

28. These succeeding Sentences distinguish the present case from Horatio Crowther's case. This argument of Mr. De, therefore, cannot be accepted.

29. In my view this suit should succeed. As there is no dispute as to the amount claimed there will be a decree in favor of the plaintiff for Rs. 4476-12-0 with interest on decree at 6 per cent,

and costs on scale No.2. Certified for two counsel.
Suit decreed.