CALCUTTA HIGH COURT

Mcleod and Co

Vs.

Sixth Industrial Tribunal

Matter No. 150 of 1957

(P.B. Mukharji, J.)

10.02.1958

ORDER

P.B. Mukharji, J.

1. This is an application under Article 226 of the Constitution. The petitioner is McLeod and Co, Ltd. The respondents are the Sixth Industrial Tribunal of West Bengal and the discharged employee K. P. Sanyal. The object of complaint is the award made by such Industrial Tribunal dated the 18th June, 1957, whereby Respondent K. P. Sanyal was held to be a clerk and workman of the petitioner. The Tribunal held that the termination of Sanyal's services without permission of the Tribunal was a clear contravention of Section 33 of the Industrial Disputes Act and therefore directed reinstatement of Sanyal in the post he was holding at the date of his discharge and payment of all his wages up to the date of reinstatement within 15 days of the publication of the award in the Calcutta Gazette.

2. Two objections have been urged against the award on behalf of the applicant. The first is that Sanyal was not a workman within the meaning of the Industrial Disputes Act. The second is that, even if he were, he is not concerned in the dispute under Section 33 (1) (b) of the Industrial Disputes Act, so as to be competent to refer his discharge for the adjudication of the Tribunal under Section 33-A of the Statute.

3. The application raises important ana large questions of construction of the Industrial Disputes Act as well as the jurisdiction of this Court in granting the writ of certiorari under Article 226 of the Constitution.

4. Before taking up the discussion of these questions, it is necessary to state the facts of the case briefly.

5. The original reference of the industrial dispute between Messrs. Mcleod and Co. Ltd. and their workmen represented by Mcleod Indian Employees' Association to the Industrial Tribunal was made by an order dated the 13th November, 1956. The Schedule to the Order of Reference specified the points of dispute. While that reference was pending K. P. Sanyal made a complaint on the 31st January, 1957 to the Industrial Tribunal under Section 33-A of the Industrial Disputes

Act that his services were wrongfully terminated by Mcleod and Co. Ltd. on the 20th December, 1956. The Industrial Tribunal found in his favour by the award whose effect I have stated above and made the order already mentioned. The present application is made by the employer and seeks for a writ of certiorari to quash the award.

6. A preliminary point of objection has been taken on behalf of the respondent that in certiorari proceedings under Article 226 of the Constitution this Court does not act as a court of appeal and correct mere erroneous decisions in law. It is contended, therefore, on behalf of the respondent that even if the decision of the Industrial Tribunal is erroneous this court should not correct a mere erroneous decision by the constitutional writ of Certiorari.

7. Mr. Niren De, learned counsel appearing for the respondent, has relied on the observations of the Supreme Court in *T. C. Basappa v. T. Nagappa*[1], and specially where it quoted with approval at page 628 (of SCA) : (at p. 444 of AIR), the observations of the previous decision, of the Supreme Court in *Veerappa Pillai v. Raman and Raman Ltd*[2]., stating.

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken, or the order to be made."

8. Mr. De also relied on the observations of the Supreme Court in *Hari Vishnu Kamath v. Ahmad Ishaque*[3], that Certiorari will be issued for correcting errors of jurisdiction when an inferior court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it and also when it acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. Kamath's case also laid down the principle that the court issuing a Writ of Certiorari acts in the exercise of a supervisory and not appellate jurisdiction the consequence of which is that the court will not review findings of facts reached by the inferior court or Tribunal even if they be erroneous.

9. It was, however, also pointed out by Kamath's case that an error in the decision or determination itself may also be amenable to a Writ of Certiorari if it is a manifest error apparent on the face of the proceeding, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by Certiorari but not a mere wrong decision. But it is Kamath's case again which points out the difficulty in the doctrine of error apparent on the face of it or the doctrine of manifest error. It says that what is an error apparent on the face of the record

[1] 1954 SCA 620 : AIR 1954 SC 440

[2] 1952 SCR 583 at p. 594 : (AIR 1952 SC 192 at pp. 195-196)

[3] 1955-1 SCR 1104 : AIR 1955 SC 233

cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case. The facts

in this case must therefore be carefully examined.

10. Before entering into the mysteries of certiorari jurisprudence concerning the nebulous doctrine of error apparent on the face of it or the equally indeterminate doctrine of manifest error the short answer to this preliminary point can be given on the ground that here there is a clear question of jurisdiction of the Industrial Tribunal involved in this application. The determination whether a person is a "Workman" within the definition of the Industrial Disputes Act is the very foundation of the jurisdiction of the Industrial Tribunal entertaining an application under Section 33-A of the Industrial Disputes Act for wrongful termination of service in contravention of Section 33 of the Act during the pendency of any proceedings before the Tribunal. None else than a workman can make such an application and the Tribunal in such a case has no jurisdiction over none else. The High Court therefore is competent and indeed, it is its duty, in certiorari jurisdiction under Article 226 of the Constitution to determine by its own judgment whether that very basic foundation of the Industrial Tribunal's jurisdiction as laid down by the Statute has been satisfied. A similar view of the Industrial Disputes Act and the High Court's constitutional powers in this respect was recently taken by Ramaswami and Imam JJ. in *Bata Shoe Co. Ltd. v. Ah Hasan*[4]. I am therefore of the opinion that the applicant's petition for a Writ of Certiorari in this case is competent within what I call the Veerappa Rule of Certiorari for jurisdictional errors as laid down by the Supreme Court.

11. The applicant's prayer for certiorari is also in my view well founded in this case even on the Kamath Rule of Certiorari for manifest error apparent on the face of the proceedings based on clear ignorance and disregard of the provisions of law and as laid down by the Supreme Court. The Tribunal, in my judgment, has, in this case', (1) come to patently inconsistent and contradictory conclusions by finding that privileges and conditions of service of officers applied to the respondent employee and the service conditions of clerks ceased to apply to him and yet holding that he remained a clerk and or "workman" and (2) by disregarding the statutory amendment of the definition of workman in the Industrial Disputes Act and applying the decision of Labour Tribunals based on previous definition before the amendment of the Statute.

12. The Tribunal's clear and definite finding of fact may be quoted in his own language:

> "SJ. Sanyal was given all the privileges which the officers serving under the Company used to enjoy. The service conditions applicable to clerks ceased to be applicable to him and conditions applicable to officers were made to operate in his case."

His conclusion thereafter that Respondent Sanyal still remained a clerk plainly contradicts that finding of fact. The Tribunal's application of the law or inference from such fact that he still remained a clerk and, therefore, was a workman within the meaning of the Industrial Disputes Act is a manifest error patent on the face of the proceedings and within the doctrine laid down by the Supreme Court in the Kamath decision.

[4] AIR 1956 Pat 518 at p. 521

13. It is necessary to emphasise here that the proper legal effect of a proved fact is essentially a question of law. Whenever am inference is drawn from certain conclusion on facts, that inference is a question of law in its essential nature. See *Nafar Chandra v. Shukur*[5]. The Judical Committee

of the Privy council also said in *Ram Gopal v. Shamskhaton*[6], at p. 232 that

> "the facts found need not be questioned. It is the soundness of the conclusions from them that is in question and this is a matter of law."

This was approved also by a much later decision of the Judicial Committee of the Privy Council in *Lakshmi Dhar Misra v. Ranglal*[7], Lord Radcliffe was pleased to point out in the House of Lords in the case of *Edwards v. Bairstow*[8]:-

> "I do not think that inferences drawn from other facts are incapable of being themselves findings of tact, although there is value in the distinction between primary facts and inferences drawn from them. When the case comes before the Court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains any thing ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any, such misconception appearing ex facie it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the Court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this slate of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test. For my part, I prefer the last of the three since I think that it is rather misleading to speak of there being no evidence to support a conclusion when in cases such as these many of the facts are likely to be neutral in themselves and only to take their colour from the combination of circumstances in which they are found to occur."

This decision of the House of Lords was given in proceedings on appeal and not in certiorari, but the importance of the classical observations of Lord Radcliffe lies in the distinction between "primary" facts and "inferences" drawn from them and in laying down "when the latter are questions of law although expressed in three seemingly different expressions in jurisprudence on this point, namely. (i) no evidence to support the determination. (ii) evidence is inconsistent with the determination and (iii) the true and only reasonable conclusion contradicts the determination and the learned Lord's preference for the third expression as being most appropriate.

14. The Tribunal in this case having come to the conclusion that the conditions of serviceand the privileges applicable to clerks ceased to apply to the applicant and the

[5]45 Ind App 183 at p. 187 : (AIR 1918 PC 92 at pp. 93-94) [6]19 Ind App 228 (PC)
[7]776 Ind App 271 at p. 276 : (AIR 1950 PC 56 at p. 58)
[8]1956 AC 14, at p. 36

conditions and privileges of officers applied to him this must be treated as a rinding of fact. This

is a primary fact, to use the language of Lord Radcliffe. The inference from this finding of fact that the applicant nevertheless remained a clerk and therefore remained a workman within the meaning of the Industrial Dispute Act is a question of law and satisfies in my judgment Lord Radcliffe's test that "the true and only reasonable conclusion contradicts such determination" and our Supreme Court test of error apparent on the face of it.

15. I, therefore, think that this Court has jurisdiction under Article 226 of the Constitution to supervise and determine for itself whether the Tribunal in this case has acted within the jurisdiction conferred upon it by the Industrial Disputes Act. If the applicant is not a workman, then obviously and plainly the Tribunal had no jurisdiction to entertain his application under Section 33-A of the Industrial Disputes Act. It is in this case a question of jurisdiction and not a mere erroneous judgment on a point of law. For error on a point of law here means illegal exercise of jurisdiction or excess of jurisdiction which can be corrected by a Writ of Certiorari. This conclusion appears to me to be also in accord with what I conceive the Supreme Court decision in *Dharangadhra Chemical Works Ltd. v. State of Saurastra*[9], where the Supreme Court declined jurisdiction to interfere with the finding of the question of fact that certain persons were not independent contractors but workmen but only on the ground that there were materials on which the Industrial Tribunal could come to that finding of fact. In this case I am satisfied that the materials are such that the conclusion of the Tribunal that Sanyal was a workman far from being supported by the facts is plainly contradicted by the Tribunal's own finding. I therefor overrule the preliminary objection to the petition.

16. Proceeding now to the objections against the Award, the first and the main objection is that the applicant is not a workman. Section 33-A of the Industrial Disputes Act makes a special provision for adjudication where conditions of service have changed during the pendency of proceedings before a Tribunal Any aggrieved "employee" can make a complaint in writing under Section 33-A of the Act. on the receipt of which complaint the tribunal Shall have to adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of this Act and shall submit its award to the Government and the porvisions of this Act shall apply accordingly. Although Section 33-A uses the words "any employee aggrieved the section only comes into operation where an employee contravenes the provisions of Section 33 during the pendency inter alia of a proceeding before a tribunal. The preservation of the status quo regarding conditions of service during the pendency of the proceedings is enjoined under Section 33 of the Industrial Disputes Act. Section 33 however does not use the word "employee" any more but uses the word "workman". It prohibits inter alia that no employer shall,

> (a) "alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings; or
>
> (b) "discharge or punish whether by dismissal or otherwise, any workman concerned in each dispute, save with the express permission in writing of the......tribunal."

[9] AIR 1957 SC 264

17. In this case the Respondent employee's complaint is that he was discharged by dismissal during the pendency of the proceedings before the Tribunal. In order to come within the benefit of this section he has to be a workman. It is only then that he gets the benefit it is only then that the tribunal gets the jurisdiction to adjudicate.

18. Section 2 (s) of the Industrial Disputes Act derines a workman. The main part of the definition is not directly relevant for the purposes of this application although reference to it will be necessary for a true construction of the exception contained in the section. That part of this definition which excludes certain persons from being workmen is material. That exclusion is contained in Section 2(s) (iv) of the Industrial Disputes Act. The other exclusions in (i), (ii) and (iii) are not again directly relevant for the purposes of this application although reference to them will be necessary for the construction and interpretation of the exception with which this replication is concerned. Section 2 (s) (iv) of the Industrial Disputes Act states that a workman does not include any such person

> "who being employed in a supervisory capacity draws wages exceeding Rs. 500/- per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature."

19. What is contended by Mr. Chaudhuri and Mr. Ginwalla on behalf of the applicant is that the Respondent Sanyal in this case is not a 'workman' and is a person who being "employed in a supervisory capacity draws wages exceeding Rs. 500/- per mensem" within the meaning of the exception contained in Section 2 (s) (iv) of the Industrial Disputes Act. At the time of his discharge the applicant was said to be an officer doing supervisory work. His salary was Rs. 575/- per month including allowances. The word "wages" in Section 2(s) (iv) of the Industrial Disputes Act must be read in the light of the definition of wages contained in Section 2(rr) which includes allowances within the meaning of 'wages'. The designation of the applicant at the time of his discharge was 'Junior Grade Assistant'. In fact, he was junior gr de assistant from 1-1-55. Previous to that date he was a clerk. The terms of his appointment as junior grade assistant are to be found in the letter of appointment given by the applicant to him. By clause (5) of the terms of appointment as contained in that letter he was required to subscribe to Provident fund 'A", which is a provident fund for the officers and not for clerks.

20. In his evidence before the Tribunal, K. P. Sanyal stated:-

> "Alter the agreement I joined 'A' group Provident Fund. Clerks are not entitled to contribute to A' group Provident Fund." He also said in his evidence before the Tribunal:- "Tea and biscuits are supplied to the clerical staff. When I became a junior grade assistant, I used to be supplied free tiffin. I took such tiffin for a year."

21. In order to claim the benefit of a workman, K. P. Sanyal said also in his evidence before the Tribunal that he had no supervisory duty. He says:-

> "I had no supervisory duty. I had no power to report against any clerk nor did I have any power to take disciplinary action against any one."

He also says in his evidence before the Tribunal:-

> "Nobody worked under me. My boss used to distribute the work. It was no part of my

work to distribute duties."

22. In cross-examination he further said before the Tribunal:-

> "Mr. Robertson was my immediate superior. He used to sign letters and documents on behalf of the Company."

23. The applicant-company did not call any witness before the Tribunal. It submitted, however, its written statement before the Tribunal in answer to Sanyal's application under Section 33-A. In that written statement the Company contends:-

> "(i) It was on 1-1-55 that he was promoted to the grade of officers."
> "(ii) Sri K. P. Sanyal was appointed in the officers' grade and on 1-1-55 his duties changed and became mainly supervisory. He was in charge of the Jute Section of the Jute Mills Department and had under him 15 clerks and typists. He was responsible for the work of the department."
> "(iii) With the change he also ceased to be a member of the Provident Fund for clerks and became a member of the Provident Fund for officers. As an officer, he became disentitled to Puja bonus and overtime pay."

24. The Company also relied on the evidence of K. P. Sanyal himself given before the Tribunal on 2-2-56 in the course of a departmental enquiry against a clerk after he became junior grade assistant. That copy of the deposition is an exhibit before the Tribunal. In that deposition K. P. Sanyal said:-

> "I am junior grade assistant in charge of the Jute Section of the Jute Department. Before being promoted to junior gr de, I was senior clerk in charge of the Section."

The point about this evidence is that here K. P. Sanyal admitted before this dispute arose that he was in charge of the Jute section of the Jute Department. A person in charge of a Department cannot ordinarily in my view be a clerk even though he may not have power to take disciplinary action or even though he may have another superior officer above him.

25. The Company also relied on certain documents which were put to Sanyal in cross-examination before the Tribunal. They are intended to throw light on the nature of the duties performed by the respondent Sanyal. A brief reference to such documents will be relevant. One such document shows that Sanyal is signing an order directing "Bill for handling charges". Another such document shows that Sanyal is giving directions to jute Babus in the following terms:-

> "All Jute Babus, please note that in future a copy of letter of authority should always be sent to C. S. S. E. Railway.
> Sd. K.P.S.
> 13/7 ".

Another document shows that Sanyal is issuing an order to Mr. Sen in the following terms:- "Mr. Sen, please check and report.

Sd. K. P. S."

A letter dated the 28th of March, 1953 addressed by the Presidency Jute Mills to the company bears the endorsement of Sanyal in these terms:-

"Tarak Babu for action.

Sd. K. P. S.

" In another letter of the Eastern Import and Export Company dated the 27th March, 1956, Mr. Sanyal is seen ordering Mr. Sen in the following terms:-

"Mr. Sen, ask for a certificate from the mill as usual please.

Sd. K.P.S.

28/3 "

Another document is a letter dated the 14th July, 1955 from Sohanlal Suganchand sending a bill and bears the order of Sanyal passing it in the following terms:- "O. K. Passed.

Sd. K.P.S.

15/7."

26. There are a few other documents of this nature all appearing as annexure to the petition to indicate that Sanyal was not an ordinary clerk doing a purely mechanical job. In fact, the Company's case on this point is that Sanyal was an officer in charge of the Jute Section. In fact, it is said by the Company in its petition that Sanyal was the Second Officer in rank, the senior officer being Mr. Robertson. It is the Company's case that Sanyal had to supervise the work of 18 jute clerks, interview brokers, receive and discuss their complaints and report to the Purchasing Officer and carry on correspondence with the officials of Jute Mills managed by the Company. In fact, the Company states that Sanyal was required to make representations on behalf of the company to the Chief Controller of Exports and Imports and was also required to represent on behalf of the Company before the Jute Tax Officer at the hearing of the Jute tax cases.

27. Upon this evidence the tribunal definitely came to the conclusion of fact that the privileges and conditions of service applicable to clerks did not apply to Sanyal and that the privileges and conditions of service applicable to officers applied to him. The exact language of the Tribunal I have quoted above elsewhere in this judgment.

28. The Tribunal in discussing the nature of work which Sanyal obviously performed in this Company commits a glaring and manifest error. The Tribunal quotes paragraphs 11 and. 12 of the application of Sanyal before the Tribunal as showing the nature of work which Sanyal pleaded and wrongly says that the Company did not deny the facts therein. The Company on the face of the record did deny. The Tribunal there fails to notice that in paragraph. 11 of that application Sanyal only enumerated "some of his duties" and not all. In fact, Sanyal states "Although the grades were changed varying with respective emoluments, his duties for the job

always remained the same" by which, he meant mainly and substantially cleri Cal. Prima facie, one should have thought it was difficult to believe that not only the designation of Sanyal was changed and he was described as a Junior Grade Assistant but also his emoluments increased to Rs. 575/- per month and yet his work remained exactly the same. It is inconceivable in plain common sense that if all the conditions of service and the privileges of officers would apply to Sanyal and his emoluments should also be not that of a clerk but of an officer, then why he should have that lift for nothing and why the Company should incur all the higher expenses and change the conditions of his service to keep him in his own old clerical job. But where the Tribunal makes a mistake on the face of its award is when it says "The Company in its written statement did not deny the correctness of the statement made in paragraphs 11 and 12" of Sanyal. The Company does deny and in paragraph 8 of the Company's written statement before the Tribunal the Company expressly says that the whole description of Sanyal in paragraphs 11 and 12 of his written statement was an attempt to magnify the clerical part of his work and indeed the Company states in so many express words:-

> "With reference to the statements made in paragraphs 11 and 12 of the written statement of the complainant, the Company states that every officer has to do some amount of clerical work - the complainant has magnified his clerical part of the work and has altogether omitted his main functions which are supervisory in nature."

29. The Tribunal apparently and obviously failed to take notice of the Company's denial of Sanyal's case and its positive assertion that Sanyal not only magnified his clerical duties which more or less every officer has to do to some extent but that Sanyal omitted to mention his "main functions which were supervisory in nature."

30. In fact even where the Tribunal is holding Sanyal to be a workman, it says that even the privileges of the covenanted staff of officers applied to him for the actual conclusion of the Tribunal is in these terms :-

> "He may have been enjoying the privileges open to the covenanted staff but having regard to the established fact that his duties were predominantly clerical, the Company's plea that he is not a workman cannot prevail."

31. To repeat what I have already said before, the finding of the Tribunal then is that:-

> (1) That it finds that Sanyal belongs to the covenanted staff of officers,
> (2) that he finds all the privileges and conditions of officers apply to him,
> (3) that the conditions and privileges of service applicable to clerks did not apply to him, and
> (4) that he draws a salary of Rs. 575/- per month, but even then his nature of the work makes him a workman because the Tribunal finds on these facts that his work was "predominantly cleri Cal. "

32. In coming to that conclusion it is plain on the face of this decision of the Tribunal that he was

moved to that decision by some cases of the Labour tribunal based on the old unamended definition of workman.
33. Now to determine who is a workman it is necessary to hark back to the definition of workman provided in the amended Section 2(s) of the Industrial Disputes Act and to see what tests the Statute itself plainly lays down.

34. In order to decide the point it is necessary to have a view of the entire definition of "workman" contained in Section 2(s) of the Industrial Disputes Act. Now by the general terms of that definition, "workman" means, inter alia, "any person employed in any industry to do supervisory or clerical work for hire or reward". This shows that because the work is supervisory, therefore it does not necessarily follow that an employee is not a workman. In other words a supervisor can be a workman under this definition. The Industrial Tribunal in this case apparently seems to proceed that the employee has got to be doing only clerical job in order to be a workman. That obviously is not, in my judgment, a true interpretation. A workman can be doing a supervisory work and still remain and be a workman within the definition provided by the Statute.

35. In order that an employee doing supervisory work for hire or reward and yet not be a workman, he has to come within one of the exceptions provided in sub-clauses (i), (ii), (iii) and (iv) of Section 2(s) of the Act. The first exclusion is in favor of a person subject to the Army Act or the Air Force Act. 1950 or the Navy Discipline Act, 1934. A person who is subject to these special Statutes of the Army, Navy and the Air Force, is not a workman within the meaning of the Industrial Disputes Act. The second exclusion is in favor of a person who is employed in the police service or in the prison. That means that a police or a prison employee is not a workman within the definition of the Statute. The third exclusion is in favor of a person who is employed mainly in a managerial or administrative capacity. In order to be an excluded person from the definition of workman under this exception, the person has to be employed "mainly" in managerial or administrative capacity, but not wholly. In other words, his main work must be managerial or administrative. Such a person is also not a workman within the definition of the Statute. The fourth exception with which we are more directly concerned in this application is in favor of a

> "person who being employed in a supervisory capacity, draws wages exceeding Rs. 500/- per month or, exercises either by the nature off the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Now this sub-clause (iv) of Section 2(s) of the Industrial Disputes Act deals with two classes of exceptions. One is the person who is employed in a supervisory capacity and draws wages exceeding Rs. 500/- per month. For him two tests are to be applied. First is the test of his employment which has to be of a "supervisory capacity" and the second is the pecuniary limit of his wages which have to be over Rs. 500/-per month. Now in this case one test of the pecuniary limit is satisfied because Sanyal draws more than Rs. 500/- per month. In order to exclude him from being a workman, it has therefore to be shown that he is employed in a supervisory capacity, Whether a person's employment is in a "supervisory capacity" or not in a particular case must not be judged by any hair splitting analysis whether it is "mainly" or subsidiarily supervisory but broadly by a total consideration of the essential nature oil his work, office,

designation and the entire context of his employment. Supervisory capacity may involve much clerical and routine or mechanical work and nevertheless remain supervisory. The test must be broadly conceived and broadly applied to the facts of each case. A doctrinaire attitude to mark rigid frontiers of supervisions should be eschewed. The Statute does not use the word "mainly" in the case of a person who is drawing wages more than Rs. 500/- a month. It is only with the other class of exceptions that this question of the "main" nature of the function is put forward as a test. This second class of exception provided by sub-clause (iv) of Section 2(s) of the Act says that a person is not a workman if he being employed in a supervisory capacity exercises, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature. Mark first the difference here that no pecuniary limit for wages is provided as a test. A person who is employed in a supervisory capacity and exercises functions of a managerial nature either by the nature of the duties attached to the office or by reason of the powers vested in him, is not a workman within the definition of the Statute, even though he may be earning wages less than Rs. 500/- per month. Secondly, a supervisor by more supervision does not come under this exception, in addition to being a supervisor he has to exercise functions mainly 0f a managerial nature in order to be within" the exception. Therefore, supervisory work is not necessarily managerial work. In this second class of exception the predominant test and, in fact, the only test is that he must be employed in a supervisory capacity and his functions must be mainly of a managerial nature. If he is employed mainly in managerial or administrative capacity, then of course he is already an excluded person under sub-clause (iii). He can also be an excluded person even if he, though not employed mainly in a managerial or administrative capacity, exercises functions mainly of a managerial nature.

36. Having regard to the categories of service indicated by the use of different words like 'supervisory", "managerial", "administrative", it is I think necessary not to import the notions of one into the interpretation of the other. The words such as supervisory, managerial and administrative are advisedly loose expressions with no rigid frontiers and I would discourage too much subtlety in trying to precisely define where supervision ends, management begins or administration starts. For that would be theoretical and not practical. It has to be in my opinion broadly interpreted from a common sense point of view where tests will be simple both in theory and in their application. I should say interpreting this section on this point that (1) a supervisor need not be a manager or an administrator, (2) that a supervisor can be a workman so long as he does not exceed the wage limit of Rs. 500/- per month and (3) that a supervisor, irrespective of his salary, is not a workman who has to discharge functions mainly of managerial nature by reason of the duties attached to his office or of the powers vested in him. I consider the Industrial Tribunal in this case has made the error in confusing a person who is an employee in a supervisory capacity drawing wages exceeding Rs. 500/- per month with the other class of a person who being employed in a supervisory capacity exercises functions mainly of a managerial nature. That is why he had been at pains to show that Sanyal had no superior authority for assigning business or that he had no initiative or that he could not dismiss, discharge or take disciplinary action against any subordinates, I am afraid these are the tests of managerial work or administrative work within the meaning of such words as used in Section 2(s) of the Industrial Disputes Act. In the case of Sanyal the only question after the financial test of wage limit was satisfied was to see whether he was employed in a supervisory capacity. In fact, the Tribunal has found that it was supervisory. I shall quote the language of the Tribunal's decision. In one place the Tribunal says that "Sj. Sanyal as the Assistant in charge of the Jute Department has to keep an eye upon the work of the clerks". Now, "Keeping an eye upon the work of other clerks" is

supervision and that is supervisory work. In another place the Tribunal says "though he had to check up the work of the clerks" yet his work was mainly clerical and not supervisory. I should have thought that "checking the work of the clerks", "keeping an eye upon the work of the clerks" would be obvious works of supervision. No other conclusion is possible from those findings of fact. Sanyal has said that he did not distribute work. Distribution of work may easily be the work of a manager or an administrator but "checking" the work so distributed or "keeping an eye" over it is certainly supervision. A manager or administrator's work may easily include supervision but that does not mean that supervision is the only function of a manager or administrator.

37. The main reason for this confusion appears to follow from hair-splitting argument about what work is supervisory or managerial or administrative. No doubt it is true that the nature of the work will be an important element for consideration in considering whether an employee who is drawing wages more than. Rs. 500/- per month is employed in a supervisory capacity. But the Tribunal came to an impossible conclusion contradicting his own finding because he apparently misguided himself by the decision of the Labour Appellate Tribunal in *Madan Gopal v. Hindusthan Commercial Bank Ltd*[10]*.,* which he quotes in his present decision That case related to the question whether a Sub-Agent of a bank could be a workman. The Tribunal here forgot that the decision in that case was given at a time before Section 2(s) of the Act was amended. He also forgot therefore that there was no question then of this limit of Rs. 500/- per month in wages. In that case the Sub-Agent was drawing a salary less than Rs. 500/- per month and the question of construction that arose there was very different from the question of construction here. The decision in Madan Gopal's case was given on the 31st August, 1955. The amendment of the definition of workman with which we are concerned was introduced into the statute book by the amending Act of 1956. Similarly the Tribunal's reference to the Punjab National Bank case, 1953 Lab AC 302 (K). has been misleading because that decision also was not dealing with the amended definition of workman.

38. I am, therefore, of the opinion that the Tribunal's decision contains a manifest error and manifest injustice in so far as it failed to take note of the new law brought in by the amendment to the definition of workman under Section 2 (s) of the Industrial Disputes Act and in so far as he disregarded such amendments of the statute in coming to the conclusion that the respondent was a workman. I am also of the opinion that the Tribunal's decision contains a patent error in so far as he held that even though the respondent supervised the work of other clerks, he remained a clerk even after the amendment of the statute and in so far he failed even to notice Company's express denial on this main issue in the pleadings. I am satisfied that the Tribunal's inference of law from conclusions of facts by the disregard of such statutory amendments are vitiated and cannot be sustained in so far as he held that the respondent continued to be a workman. It necessarily follows that the Tribunal erred in exercising its jurisdiction over a person who was not a workman within the meaning of Section 33 of the Industrial Disputes Act and thereby acted in excess of the jurisdiction conferred upon him by the statute.

39. It follows that the Rule must therefore be made absolute on this ground alone.

[10]1956-1 Lab LJ 414 (Luck)

40. What remains now to consider is the other point argued before me that the respondent was not concerned in the dispute under Section 33 of the Industrial Disputes Act so as to be competent to maintain an application under Section 33-A of the Industrial Disputes Act before

the Tribunal.

41. Contravention of the provisions of Section 33 of the Industrial Disputes Act is the very foundation on which a complaint under Section 33-A of the Act can be entertained. The contravention complained of in this case is in the language of Section 33, "during the pendency of the proceedings before the Tribunal in respect of an industrial dispute, the employer has discharged by dismissal a workman concerned in such dispute without the express permission in writing of the Tribunal". This question arises only if the applicant is a workman. If he is a workman, then he has got to be the one "concerned in such dispute". Unless the workman is concerned in the pending dispute before a tribunal, the procedure contemplated in Section 33-A of the Act does not come into play at all. An applicant under Section 33-A of the Act must be (1) a workman and (2) concerned in the pending dispute and (3) allege contravention of Section 33 of the Act. With a view to see whether the applicant, even if he be regarded as a workman, was concerned in the pending dispute, it is necessary to look at the terms of the dispute before the tribunal in the main reference. The order of reference of the main dispute is annexed to the petition.

42. The important questions on this point are between whom was the dispute and what were the points of dispute. They are necessary considerations to decide whether the workman is "concerned" in the dispute.

43. The order of reference states:- "Whereas an industrial dispute exists between Messrs. Mcleod and Co. Ltd.. Mcleod House, 3 Netaji Subhas Road, Calcutta 1 and their woikmen represented by Mcleod Indian Employees' Association, 3 Netaji Subhas Road, Calcutta 1, regarding the matters specified in the schedule." On this it is argued on behalf of the applicant that in order to be concerned in a dispute the workman in this case must be one who can be said to be represented by Mcleod Indian Employees' Association. In paragraph 6 of the petition this point of objection is expressly taken by stating:-

> "The second respondent was not and could not be a member of the Said Mcleod Indian Employees' Association and was not a workman of your petitioner at all and was not a workman concerned in the said dispute."

I have quoted the material pleading in the petition. In Sanyal's affidavit-in-opposition he has not asserted or denied that he was not and could not be a member of the Mcleod Indian Employees' Association. Paragraph 9 of his affidavit-in-opposition de-Is with paragraph 6 of the petition. He asserts there that he was a workman and that he was a workman concerned in the dispute. But he has not pleaded membership of the Mcleod Indian Employees Association. According to Mcleod Indian Employees' Association which was registered under the Trade Union Act, 1926 and established in 1946, membership involves a monthly subscription under ft. 4 and it ceases if the member is in arrear of subscription for three months and does not clear his dues in spite of notice under Rule 7. Nothing is said by respondent Sanyal that after he became a junior grade assistant he continued to be a member of this Association and paid his subscription.

44. On these facts it was argued on behalf of the applicant that even if Sanyal is a workman, he has not shown that he is concerned in such dispute because the dispute that was pending before the Tribunal was a dispute between the applicant and its workmen represented by the Mcleod

Indian Employees' Association and no others.

45. On behalf of the respondent my attention was drawn to Section 36 of the Industrial. Disputes Act in this connection. The argument is that under that section it is expressly provided inter alia that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by an officer of a registered trade union of which he is a member and where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed. I do not think that Section 36 helps the respondent in that argument. Section 36 of the Act only specifies that a workman who is a party to the dispute shall be entitled to be represented by cert in representatives mentioned therein. It lays down the rule of representation by a party to the dispute and cannot explain the expression "concerned in such dispute". The question here is more fundamental and not a mere question of representation. The question is whether in the pending dispute before the Tribunal he is at all a party to the dispute. Under the express terms in the order of reference the actual parties to the dispute that was pending were no doubt the employer and the workmen as represented by a particular Association of which, it now transpires on the pleadings that the respondent Sanyal was not a member. The question is more far reaching and it is this, whether even a non-party to a dispute can apply under Section 33-A of the Act, if he is "concerned" in the pending dispute. To put it in other words the issue is whether the expression "concerned" in such dispute in Section 33 of the Act must be limited only to the "party" to adispute.

46. Mr. Ginwala for the applicant relied on Section 10 of the Industrial Disputes Act and especially sub-section (5) thereof. Section 10(5) of the Act says that

> "Where the dispute concerning any establishment or establishments has been, or is to be, referred to a Tribunal under this section and the appropriate government is of the opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of similar nature is likely to be interested in or affected by such dispute, the appropriate government may at the time of making the reference or at any time thereafter, but before the submission of the award, include in that reference such an establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments."

The reason for Mr. Ginwala's reliance on Section 10 (5) of the Act is to show that the Statute provides for reference to include similar interests or similar groups in order to cover persons or classes who are not actual parties but the Government in the present reference has made no such inclusion. He also relies on sub-section (2) of Section 10 of the Act which says that

> "where the parties to an industrial dispute apply in the prescribed manner whether jointly or separately for a reference of the dispute to a Board, Court or Tribunal, the appropriate government if satisfied that the persons applying represent the majority of each of such party shall make the reference accordingly." This again has no application and does not help to decide the point because it relates to "parties to an industrial dispute" and their

> representation. Finally Mr. Ginwalla refers to sub-section 4 of Section 10 of the Act which says that where in an order referring an industrial dispute to a tribunal under this section or in a subsequent order, the appropriate government has to specify the points of dispute for adjudication, the tribunal shall confine its adjudication to those points and matters incidental thereto. His submission is that respondent Sanyal is not covered by this order of reference.

47. These arguments, in my view, both on the side of the applicant as well as on the side of the respondent appear to miss the real point. The question here is not whether respondent Sanyal is a party to the dispute. The question under Section 33 of the Industrial Disputes Act is whether he can be called a workman (assuming he is a workman) "concerned" in the dispute. A person in my opinion may not be a party to the pending conciliation proceeding or to a pending proceeding before the Industrial Tribunal, but may nevertheless be "concerned" in the dispute in the sense that the results of the pending proceedings might affect his conditions of service or his privileges or his rights or his obligations. Therefore, I am of the opinion that a workman concerned in the dispute within the meaning of Section 33 of the Industrial Disputes Act may not be an actual party to the pending dispute but he must be "concerned" in such dispute in the sense that the decision of that pending dispute will affect his conditions of service or his rights or his privileges or his obligations.

48. I am inclined to give the ordinary meaning to the words "concerned in such dispute" by holding that the result of such pending dispute will affect either favorably or prejudicially the conditions of employment or the rights or obligations of the workmen in question. The observations of the Supreme Court of India in the *Automobile Products of India Ltd. v. Rukmaji Bala*[11], appear to be relevant on this question. Das J. as he then was points out at page 1256 (of SCR) : (at p. 265 of AIR) :-

> "The object of section 22 of the 1950 Act like that of Section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimization by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of those proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation between the employer and the workmen. To achieve this object a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment."

[11] 1955-1 SCR 1241 : AIR 1955 SC 258

Again, Das. J. at page 1252 (of SCR) : (at p. 263 of AIR) says:-

> "When an employer contravenes the provisions of Section 33 of the 1947 Act or of Section 22 of the 1950 Act, the workmen affected thereby obviously have a grievance."

49. Now the word "affected" has a wider import than the expression a "party" to the dispute. In the light of the purpose of Section 33 of the Industrial Disputes Act as interpreted by the Supreme Court, I am therefore of the opinion that the proper meaning to be given to the words "concerned in such dispute" is to give it a wider connotation than the ordinary words "party to the dispute". That meaning seems to me also to be more in accord with the underlying principle of the Industrial Disputes Act which contemplates proceedings in respect of collective disputes between workmen on the one side and employer on the other. In that collective context the words "concerned in such dispute" should be given a collective bearing in the sense that conditions affecting the services of one class or group of workmen may prejudice another workman although he himself may not be a member of the Trade Union or the Association, the disputes between the members of whom and the employer are pending before the Tribunal. That the pending dispute in the present case is a collective one, there can be no doubt because the dispute referred to in the order of reference is one between the employer on the one hand and workmen represented by the Mcleod Indian Employees Association, a registered Trade Union, on the other. In such a dispute a workman, even if he is not a member of the Association by paying membership subscription, is "concerned" be cause the results will also affect him.

50. The points of dispute in this case included in the order of reference will clearly show that it cannot be said that employee Sanyal is not interested in at least some of the items of the dispute. For instance, item 1 "what should be the rules for granting sick leave to the employees of the office", item 4 "whether the company is justified in retaining retired employees on temporary basis without giving them extension as per award of 1953", item 8 "what should be the rules for granting casual leave", item 10 "whether the employees should get half holidays which were previously declared and whether the half holidays declared by the Government on special occasions should be given to the employees" and item 11 "whether employees whose services were terminated by retirement, death or otherwise before payment of bonus are entitled to get bonus proportionately or more for the services rendered by them". In these points of dispute the words used are "employees" while in others the words used are "workers". There is no doubt that Sanyal is an employee although he may not be a workman as I have held he is not. If he be held to be a workman, then I would hold he is "concerned" in some at least of the disputes mentioned in the order of reference, although he may not be a party to the dispute in the sense that he may not be a member of the Mcleod Indian Employees' Association.

51. As I have held that Respondent Sanyal is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, it necessarily follows that the Industrial Tribunal in this case exceeded its jurisdiction in entertaining an application by Respondent Sanyal under Section 33-A of the Industrial Disputes Act and in making an Award thereupon. I, therefore, set aside the Award of the Industrial Tribunal dated the 18th June, 1957 and make the Rule absolute. There will be no order as to costs.
Application allowed.