

FEDERAL HIGH COURT

The India Paper Pulp Co. Ltd

Vs

The India Paper Pulp

(Kania, C.J.)

30.03.1949

JUDGMENT

Kania, C.J.

1. This is an appeal from a judgment of High Court of Judicature at Port William in Bengal and involves principally the question of the reinstatement of 109 employees of the appellant Company, who were discharged after notice was given to them on 4th December 1947. Their service was terminated as at the end of January and their full pay for the months of December 1947 and January 1948 was paid to them.

2. The relevant facts are these. On 10th September 1946, the employees of the appellant Company formed into an union, which was registered on 3rd December 1946. It was alleged that almost all the employees of the Company became members of the Union. On 24th December 1946, the Union submitted to the Company a memorandum of the demands of the employees, for the amelioration of their condition. The company declared a lock-out on 23rd February 1947 and negotiations through the Labour Commissioner for re-opening the factory having failed, the Government of West Bengal on 6th May 1947 referred the dispute to Mr. Simpson and subsequently to Dr. Waight for adjudication. The lock-out was withdrawn. The proceedings before Dr. Waight ended with his award on 22nd August 1947. The workmen and the Union alleged that the Company failed and neglected to implement the terms of the award and started transferring workmen from department to department to victimize those who had actively pressed their demands for acceptance. On 28th November 1947 the Company asked the President of the Union to come and discuss on 4th December 1947 certain specific matters as mentioned in their letter, at the factory office. That did not show that there was any excess labour. The President of the Union could not attend the meeting and the Company gave notice of termination of employment to 109 workmen. The Union and workmen contended that the allegation of excess labour was mala fide and it was a case of victimization and adoption of unfair labour practice. They claimed that the discharged workmen be reinstated without break of service and for compensation. Dispute having thus arisen between the Company and Union and workmen, the Government of West Bengal issued the following order on 3rd June 1948.

Calcutta

3rd January 1948

Whereas an industrial dispute has arisen between the India Paper Pul. PCo., Ltd., Managing Agents Messrs. Andrew Yule & Co. Ltd., 8 Clive Road, Calcutta, and their discharged workmen whose names are mentioned in the list annexed hereto, as represented by the India Paper Pulp Workers Union, and it is expedient that the said dispute should be referred to the Tribunal constituted under the Industrial Disputes Act, 1947, the Governor is pleased under Sections 7 and 10 of the said Act to appoint Mr. A.T. Das Gupta, Additional District Judge, to be the Tribunal for adjudication of the said dispute.

The said Tribunal shall meet at Writers Buildings on such dates as the said Mr. Das Gupta Additional District Judge, shall direct.

3. Mr. Das Gupta proceeded to hold his sittings within the limits of the ordinary original civil jurisdiction of the High Court at Calcutta when the discharged former workmen of the Company claimed reinstatement and compensation. The Company contended that Mr. Das Gupta had no jurisdiction to adjudicate on the claim for reinstatement and/or compensation. Mr. Das Gupta in spite of that notice of the Company's contention notified his intention to hold a sitting of the Tribunal and on 11th March 1948 the appellants filed a petition in the High Court for the issue of a writ of prohibition and a writ of certiorari prohibiting Mr. Das Gupta from exercising jurisdiction in respect of the claims of the workmen for reinstatement of, and payment of compensation to, the Company's said discharged former workmen. There were also prayers for orders under Section 45, Specific Relief Act asking Mr. Das Gupta to forbear from awarding such reinstatement and/or compensation. When the petition came before Majumdar J., realising the importance of the matter, he directed the parties to request the Chief Justice to form a Bench to hear the petition. Sir Arthur Trever Harries C.J., and Chakravarty J. thereafter heard the petition and dismissed the same. On 14th November 1948 the Company asked for leave to appeal to this Court and the same having been granted this appeal is filed here.

4. In the High Court the learned Judges considered that the High Court had no jurisdiction to issue the writ of prohibition and certiorari because the factory of the Company in which reinstatement was claimed was outside its original civil jurisdiction, and the workmen also lived outside its jurisdiction. The Court, however, held that the clear words of Section 45, Specific Relief Act imparted jurisdiction to the Court to issue an order against Mr. A.T. Das Gupta who was holding his sittings within the original jurisdiction of the Court and who, if he proceeded with the reference, would consider and decide the question within the jurisdiction of the Court. Having regard to our decision on the question of the jurisdiction of the Tribunal it is not necessary to decide the question of jurisdiction of the Court to issue the writ of prohibition and certiorari.

5. On behalf of the appellant it was contended that there was no jurisdiction in the Industrial Tribunal to decide anything because, firstly, no dispute was referred to the Tribunal. This is

admittedly a technical defence and is based on the wording of the order of the Government of West Bengal dated 3rd January 1948. In this connection it was pointed out that the order of 3rd January 1948, of the Government of West Bengal did not mention any Industrial dispute. Secondly, the order, as worded, was only an order of appointment and there were no words of reference to the Tribunal. It was argued that the words "and it is expedient that the said dispute should be referred to a Tribunal" did not constitute a reference ; they were in the preamble and did not form an operative part of the order. The order is far from satisfactory and is not carefully drafted. Section 10(1) of Act XIV [14] of 1947 provides as follows:

If any industrial dispute exists or is apprehended, the appropriate Government may by an order in writing... (c) refer the dispute to a tribunal for adjudication.

The section does not require that the particular dispute should be mentioned in the order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the tribunal are clear from the order. To that extent the order does not appear to be defective. Section 19 of the Act, however, requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference. It is material in this connection to notice that in the order there is a reference not only to Section 7 but also to Section 10 of the Act and the order further goes on to say that the appointment is for adjudication of the said dispute. Section 7 empowers the appropriate Government to constitute one or more tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. If the order was only intended to establish a tribunal, the reference to Section 10 of the Act would be out of place. The express reference to that section in our opinion could be reasonably construed to constitute a reference to the Industrial Tribunal of the dispute, generally referred to in the first part of the order. In our opinion therefore this contention has no substance.

6. The question of jurisdiction of the Tribunal to order reinstatement is fully discussed in the judgment of the Court delivered to-day in the Western India Automobile Association case A.I.R. (36) 1949 P.C. 111. As the question of non-employment is an industrial dispute, the claim for compensation for wrongful dismissal, i. e., non-employment is, in our opinion, clearly a dispute in connection with non employment. No other contentions were urged before us in the appeal.

7. The applicant's contentions being that rejected, the appeal fails and is dismissed. The appellant to pay the costs of respondent 1.

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