FEDERAL HIGH COURT

Western India Automobile Association

Vs

The Industrial Tribunal

(Mahajan, J.)

30.03.1949

JUDGMENT

Mahajan, J.

1. This is an appeal from a judgment of a Division Bench of the High Court of Bombay cancelling a writ of prohibition issued by Coyajee J. against the Industrial Tribunal to which a dispute between the Western India Automobile Association and its workers bad been referred under Section 10, Industrial Disputes Act, XIV [14] of 1947.

2. Though a number of points were raised before Coyajee J. and before the Division Bench, the principal question raised by this appeal relates to the jurisdiction of the Tribunal constituted under the Act to entertain the dispute which had been referred to it. The controversy is firstly as to the scope of the Act, i. e., whether the Act has application to cases of private employers or is limited only to cases where either the Central or the Provincial Government, or a local authority is the employer and secondly as to whether the dispute as to reinstatement of certain dismissed employees is a matter which is referable to the Tribunal.

3. On an application for a writ of prohibition and a writ of certiorari against the Tribunal restraining it from proceeding with the investigation of this dispute it was held by Coyajee J. that the Western India Automobile Association was an employer and any dispute between it and its workers fell within the ambit of the Act. He, however, held that the dispute as to reinstatement of dismissed employees was outside the scope of the Act. A writ was accordingly ordered to issue. Against this decision an appeal was preferred by the Province of Bombay and another appeal by the Western India Automobile Association. The appeal by the Province of Bombay contested the second finding of the Judge, while in the Association's appeal the first finding was challenged. The learned Judges of the Division Bench by separate judgments dismissed the appeal preferred by the Association and confirmed the decision of Coyajee J. on the first point. The appeal filed by the Province was allowed and the decision of Coyajee J. on the second point was set aside. It was held that the dispute as to reinstatement of dismissed employees was an "industrial dispute" between the employer and the employees within the meaning of the Act and the Tribunal had jurisdiction to adjudicate upon it. The same two points that were seriously canvassed before the High Court were urged before us.

4. As regards the first contention raised on behalf of the Association that the scope of the

Industrial Disputes Act, 1947, is only limited to cases of industries or of undertakings carried on by Government or Local authority and that it does not include within its scope industries carried on by private individuals, we have no hesitation in repelling it. The argument on this point is based on the definition of the term "employer" given in Clause (g)(i) of Section 2 of the Act, which runs thus:

> 'Employer' means-
>
> (i) In relation to an industry carried on by or under the authority of any department of a Government in British India, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
>
> (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

Industrial dispute' has been defined in Clause (k) of the same section in the following terms:

> 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.

It was contended that as the Association did not fall within the definition of the word "employer" given in the Act (the definition being exhaustive), in its case there was no power to make a reference to the Tribunal and that the scope of the Act was limited to cases of Government-run concerns or those in which a local authority was the employer. In our opinion, the definition given is neither exhaustive nor inclusive. In plain terms, the definition says that "employer" in relation to an industry carried on under the authority of any department of Government in British India means the head of the department (where no other authority is prescribed) and in the case of an industry carried on by or on behalf of a local authority, it means the chief executive officer of the authority. In relation to such industries a definition has been given of the term "employer." As it was not easy in such cases to discover with certainty an individual or an officer who would answer that description, this definition indicates who shall be regarded as employer in the particular cases. No attempt, however, was made to define the term "employer" generally or in relation to other persons carrying on industries or running undertakings.

5. In the Trade Disputes Act, VII [7] of 1929, this expression was defined in Section 2(c) in the following terms:

> 'Employer' in the case of any industry, business or ' undertaking carried on by any department of any Government in British India, means the authority prescribed in this behalf or, where no authority is prescribed, the head of the department.

It was conceded by Mr. Setalvad that the definition given in Act VII [7] of 1929 was a limited definition in relation to Government department only. He, however, urged that the definition had been worded differently therein. The word "means" was not used in the beginning of the definition but was so put in the context that it clearly indicated that the definition was restricted to

businesses or undertakings of departments of Government. In Act XIV [14] of 1947, however, the Legislature by saying " 'employer' means" has made the definition exhaustive. In our judgment, there is no such difference in the meaning of the two definitions given in the Act of 1929 and in the Act of 1947. In one definition, the word "means" has been used after the industries had been particularized, and in the other it has been used in relation to those industries. The words "in relation" used in the definition make the intention of the Legislature quite clear and they indicate that it was in relation to those particular industries only that the expression "employer" was defined. This interpretation is also consistent with the phraseology employed by the Legislature in different sections of the Act. In Section 18 it has been laid down that a settlement arrived at in the course of conciliation proceedings under the Act or an award which was declared by the appropriate Government to be binding shall be binding on all parties to the industrial dispute ; and where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates. It is difficult to apply this provision in the Act to heads of Government department. The manner in which the section is drafted shows that disputes concerning all industrial concerns whether owned by Government or private person were included within the ambit of the Act.

6. The preamble to the Act gives a wide scope to it, when it says that it is expedient to make provision for the investigation and settlement of industrial disputes and for certain other purposes thereinafter appearing. It does not limit its sphere to businesses run only by the Government or local authorities. The scheme of the Act fits in with the interpretation we are placing on the expression "employer" and any other construction of it would create incongruity and repugnancy between different sections of the Act. The Act was intended to be a more comprehensive law on trade disputes than its predecessor, the Trade Disputes Act, 1929. It was not denied that under that Act, the term "employer" included within its scope industries owned by persons other than Government departments or local authorities. In the Act of 1947 an elaborate and effective machinery for bringing about industrial peace has been devised. Provision has been made for Works Committee, Conciliation Boards, Courts of Enquiry and Industrial Tribunals, to achieve the object. Strikes and lock-outs are made illegal without fourteen days' notice, It is, in our opinion, not possible to argue that this elaborate machinery was devised for the benefit of industries run by Government and local authorities only and that the Trade Disputes Act, 1929, was repealed in order to exclude from its ambit industries run by private persons. The result is that the decision of Coyajee J. and of the Division Bench of the High Court on the first point, in our opinion, is correct.

7. The principal contention in the case is that the dispute as to reinstatement is outside the jurisdiction of the Industrial Tribunal. A number of demands made by the employees were referred to the Tribunal. No objection has been taken in respect to the thirteen out of the fourteen demands. The dispute as to reinstatement is worded as follows:

> Such of the members of the W.I.A.A. staff who joined the strike at the date of its commencement on 2nd January 1947 and/or thereafter should be reinstated.

8. It was suggested that the dispute about reinstatement was not connected with the employment or non-employment of any person. This construction was accepted by Coyajee J. and he observed as follows:

It does not appear that no Court of law either at common law or in equity would decree the enforcement of a contract which it could not supervise being carried out, and therefore the decree would be without' any sanction behind it. In these circumstances it has always been held by Courts of law that contracts which entail performance of one part of personal service can-not be enforced, and a breach thereof could only be compensation by award of damages. Conversely, a wrongful dismissal is a breach of the contract and the Court will not on the same principles decree a reinstatement of a dismissed employee. This question was considered in the leading case of R.v. National Arbitration Tribunal, Ex parte Horatio Crowther & Co. Ltd (1947) a All E.R. 693. In that case it was held by Goddard C.J. and Humphreys J., Croom-Johnson J. dissenting, that a direction to reinstate the workmen would be ultra vires the tribunal and that any direction in the form of a finding in that respect and allowing of the claim was equivalent to such a direction and that the award in so far as it related to that finding must be quashed.

9. The learned Judges of the Division Bench distinguished the case on which Coyajee J. placed reliance on several grounds, and reached the conclusion that under the Indian statute the Tribunal had full power to adjudicate upon all matters in dispute between the employers and workers and it was open to it to award reinstatement of a dismissed workman and that such, an award was enforceable under the coercive machinery provided for in the Act. The view expressed by the Division Bench of the Bombay High Court on this point has also been taken by the High Courts of Calcutta and Madras. The decision of the Calcutta High Court was given by Sir Trevor Harries C.J. and Chakravarti J. in a number of cases heard together and was considered by us in civil Appeals Nos. VIII, IX, XI, XII, XIV, XVI, XIX and XX of 1949, which were heard immediately after the present appeal. Mr. Chaudhuri and Mr. Munshi addressed us at length in those appeals on this point and not only stressed and supplemented the arguments of Mr. Setalvad in this case but also elaborated them. We shall deal with all the arguments on this point here.

10. The question for determination is whether the definition of the expression "industrial dispute" given in the Act includes within its ambit, a dispute in regard to reinstatement of dismissed employees. The definition is, as pointed out by Lord Porter in *National Association of Local Government Officers v. Bolton Corporation*[1] worded in very wide terms which unless they are narrowed down by the meaning given to the term "workman" would seem to include all employees, all employment and all workmen, whatever the nature or scope of the employment may be. Reinstatement is the employment of a person non-employed and is thus within the words of Lord Porter "all employment". Thus, it would include cases of re-employment of persons victimized by the employer. The words of the definition may be paraphrazed thus: "any dispute which has connection with the workmen being in, or out of service or employment". "Non-employment" is the negative of "employment" and would mean that disputes of workmen out of service with their employers are within the ambit of the definition. It is the positive or the negative act of an employer that leads to employment or to non-employment. It may relate to an existing employment or to a contemplated employment, or it may relate to an existing fact of non-employment or a contemplated non-employment. The following four illustrations elucidate this point: 1) An employer has already employed a person and a trade union says "Please do not employ him". Such a dispute is a dispute as to employment or in connection with employment. (2) An employer gives notice to a union saying that he wishes to employ two particular persons.

The union saya "no". This is a dispute as to employment. It arises out of the desire of the employer to employ certain persons. (3) An employer may dismiss a man, or decline to employ him. This matter raises a dispute as to non-employment. (4) An employer contemplates turning out a number of people who are already in his employment. It is a dispute as to contemplated non employment. "Employment or non-employment" constitutes the subject matter of one class of industrial disputes, the other two classes of disputes being those connected with the terms of employment and the conditions of labour. The failure to employ or the refusal to employ are actions on the part of the employer which would be covered by the term "employment or non-employment". Reinstatement is connected with non-employment and is therefore within the words of the definition. It will be a curious result if the view is taken that though a person discharged during a dispute is within the definition of the word "workman', yet if he raises a dispute about dismissal and reinstatement, it would be outside the words of the definition "in connection with employment or non-employment". It was contended that the words "employment or non-employment" were employed in the same sense, just to remove any ambiguity that might arise if the word "employment" alone was used. In other words, the word "non-employment" has limited the meaning of the word "employment". To our mind, the result is otherwise. The words are of the widest amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. Mr. Setalvad contended that the expression "in connection with employment or non-employment" excludes the question of non-employment itself which must exist as a fact to supply the nexus with the dispute, The argument is, in our opinion, unsound. The words "in connection with" widen the scope of the dispute and do not restrict it by any means.

11. We shall next examine the Act, to determine its scope. The Act is stated in the preamble to be one providing for the investigation and settlement of industrial disputes. Any industrial dispute as defined by the Act may be reported to Government who may take such steps as seem to it expedient for promoting conciliation or settlement. It may refer it to an industrial Court for advice or it may refer it to an Industrial Tribunal for adjudication. The legislation substitutes for free bargaining between the parties a binding award by an impartial tribunal. Now, in many cases an industrial dispute starts with the making of number of demands by workmen. If the demands are not acceptable to the employer, -- and that is what often happens, - it results in a dismissal of the leaders and eventually in a strike. No machinery for reconciliation and settlement of such disputes can be considered effective unless it provides within its scope a solution for cases of employees who are dismissed in such conditions and who are usually the first victims in an industrial dispute. If reinstatement of such persons cannot be brought about by conciliation or adjudication, it is difficult, if not impossible, in many cases to restore industrial peace which is the object of the legislation. Demand as to reinstatement may arise in several ways. It may be a demand of the workmen in service that unless the dismissed workmen are reinstated, they will strike work. It may be a demand of the workmen on strike refusing to resume work unless persons victimized are put back in service or it may be a demand of the dismissed employees themselves. So far as one can see, reinstatement may be an essential relief to be provided for in any machinery devised for settlement of induatial disputes. "Any dispute connected with employment or non-employment" would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other question and it would also include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workers.

12. The interpretation we are placing on these words was accepted on a similarly worded definition in the English statutes on this subject. In the Industrial Courts Act, 1919, "trade dispute" has been defined as meaning any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment or the terms of the employment or with the conditions of labour on any person.

With a slight variation this definition is expressed in the same terms in Act XIV [14] of 1947. In the Unemployment Insurance Act, 1935 (25 Geo. V,C.8), Section 113(1)(u), "trade dispute" means any dispute between employers and employees or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises or not. A dispute between employers and employers is not within the definition. In our Act XIV [14] of 1947 what was excluded by the last sentence of this section of the English Act has been expressly included. In vol. 34 of Halsbury's Laws of England (Hailsham Edition), in Para. 605 it has been stated that disputes connected with the employment or non-employment of any persons were held to have arisen when the dismissal or reinstatement of some employee was demanded. Reference has been made in this connection to certain decisions given by umpires in industrial disputes.

13. Under Regulation 58AA of the Defence Regulations, 1939, which deals with avoidance of strikes and lockouts, power was given to the Minister of Labour and National Service for making provision for establishing a tribunal for the settlement of trade disputes and for regulating the procedure of the tribunal. It was said in this Regulation that the expression "trade dispute" has the same meaning as in the Industrial Courts Act, 1919 On 18th July 1940, the Minister of Labour issued an order under Regulation 58AA (The Conditions of Employment and National Arbitration Order, 1940), In Part V of the Order, the expression "trade dispute" was defined as follows:

> 'trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person.

It will be seen that the definition is identical with the one that was given in the Industrial Courts Act, 1919, and with slight immaterial variations, it is the same that we have got in the Indian Act.

14. In 1943 this definition was considered in *R. v. National Arbitration Tribunal, Ex parte Keable Press Ltd.*[2] by the Court of appeal. In that case a member of a trade union had formerly been employed by a newspaper. The newspaper was ordered to cease publication for a time. When this ban on publication was lifted, the newspaper, according to the custom of the trade, applied to the union for suitable workmen. The union sent the former employee in question, but the newspaper refused to accept him in any position on their staff. The union insisted on his reinstatement and called a strike in consequence. It was contended that this was not a trade dispute within the meaning of the Conditions of Employment and National Arbitration Order, 1940, since it was a dispute between the employers and the union and not between the employers and their employees. This contention was repelled and it was held that in the circumstances the dispute was between the appellants and their workmen and the National Arbitration Tribunal had jurisdiction to entertain the reference. It will be noticed that the whole dispute in this ease related

to reinstatement. It was not contended that the dispute as to reinstatement was outside the scope of the definition of the phrase "trade dispute." On the other hand, it was assumed that this dispute was within the ambit of the definition. In the judgment it was observed as follows:

> It is not disputed that the particular dispute in question relates to a subject-matter of the kind which is referable to the tribunal.

Reference may also be made to Section 5, Trade Disputes Act, 1906. "Trade dispute" is-defined as:

> Any dispute between employer and workmen and between workmen and workmen which is connected with (inter aha) the employment or non employment of any person.

15. In *Hodges v. Webb*[3] a dispute arose whether non-unionist labour in general and member of the National Association of Supervising Electricians in particular should be employed to work along with the members of the Electrical Trade Union. The workmen by their union objected to working with the members of the National Association of Supervising Electricians or to the employment of the members of that Association in jobs on which the members of the union were engaged. Peterson J., observed:

> the dispute was one which was connected with the employment of the members of that Association whom the Union persisted in regarding as in all essentials non-unionists. Whether the Union was right in this view appears to me to be immaterial for the purposes of this case. It is sufficient that it objected to members of the Association being employed on jobs on which members of the Union were engaged. No doubt this attitude involves a contest between the National Association and the Electrical Trade Union as it necessarily tends to draw men away from the Association. But this consequence does not convert a trade dispute into something which is not a trade dispute.

The dispute in the case did not relate to reinstatement but concerned a wider field, i. e. "who could be taken into employment by the employer", with whom he could enter into a contract of service.

15a. In *White v. Riley*[4] Lord Sterndale, M.R. observed that a dispute between workmen and workmen in connection with the employment of a person, namely, the plaintiff, the dispute being that the men in the shop insisted that no skilled man should be employed unless he belonged to the Curriers' Union, was a "trade dispute" within the definition. The view of Peterson J. was referred to with approval with the following remarks:

> 'It is really almost a reductio ad absurdum of this section to say, as the respondents are bound to say, that it does not include any dispute, between union and non-union men and that if union and non-union men are working in the same employment and the union-men say, 'We will no longer work with the non-union men unless they join our union', that is not a dispute' between workmen and workmen connected with the employment of non-employment of any person. It seems to me that that is contrary to the words of the section. I do not think it is necessary to say where the limitation lies which is to be put upon this

section. It is a question of fact in each case.

These observations very strongly suggest the view that we are taking of the definition.

16. The question for determination can therefore be properly worded in this way "Can an unwilling employer or employee having no contract or employment be compelled to be served or serve by the Tribunal, although the employer or the employee is not willing to do so?" 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.

17. 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 a contract of employment at all. It was strenuously urged that such a power does not exist in any Tribunal and in the absence of express words, the Court should not consider that the Industrial Tribunal has jurisdiction to do so on the ground that it is implied in the definition of industrial dispute" This argument overlooks the fact that when a disputs 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. Conversely, if a workman is unwilling to work under a particular employer a trade union may insist on his doing so and the dispute will be about the employment of the workman by the employer and thus become an industrial dispute subject to the award of the Tribunal. Therefore if the bringing about of such relationship is within the jurisdiction of the Industrial Tribunal, because such disputes are covered by the definition of the expression "industrial dispute" there appears no logical ground to exclude an award of reinstatement from its jurisdiction. It can equally direct in the case of dismissal that an employee shall have the relation of employment with the other party, although one of them is unwilling to have such relation.

18. Coyajee J. was not prepared to place this interpretation on the definition in view of the decision of the King's Bench Division in *R. v. National Arbitration Tribunal, Ex parte Horatio Crowther & Co., Ltd*[5]. It was very strongly argued on behalf of the appellants that the interpretation placed on the definition of the words "trade dispute" in this decision by Goddard C.J. and other learned Judges was the correct one and that the words of the definition "in connection with the employment and non employment" did not include within their ambit a dispute regarding reinstatement. It is therefore necessary to ex-amine with care what was exactly decided in Ex parte Horatio Crowther & Co. Ltd.(1948) 1. K.B 424.

19. What happened in that case was this. Since November 1946, workmen employed by the applicant, a company, through their union had pressed for changes in wages and conditions of service. On 28th March 1947, the company gave the workmen on the manufacturing side of their business, including those in the union, notice terminating their employment as from 4th April. On 14th April the matter was reported to the Minister of Labour and National Service, who

referred it to the National Arbitration Tribunal. The claim of the workmen included inter alia,

> (1) The reinstatement from the date of dismissal of the workers dismissed". The award of the tribunal stated: "They find in favour of the claim set out in item (1) and award accordingly

On an application for an order of certiorari to quash the award; it was held:

> (i) although at the date of the report to the Minister of Labour the contract of service between the company and the workmen had been terminated, there was nevertheless a 'trade dispute,' within the meaning of Article 7 of the Order of 1940, which had been properly referred under Article 2(1);
>
> (ii) a direction to reinstate the workmen would be ultra vires the tribunal, and, as (Groom-Johnson J. dissentiente) the finding on item (1) of the claim was equivalent to such a direction, the award in so far as it related to that finding must be quashed.

None of the three learned Judges expressly held that the claim of the workman in item (1) above stated was not referable to the tribunal as it was not within the ambit of the definition of "trade dispute" given in the Act. The learned Judges, however, took the view that though a dispute regarding reinstatement was referable to the tribunal, an order for reinstatement could not be made. One of the Judges held that no such direction had actually been given by the award. The appellants contended that the decision that the direction qua reinstatement was in excess of the powers of the tribunal could only be on the assumption that the tribunal had no power to entertain this dispute because it was not covered by that expression as defined in the Act. It was argued that if there was no jurisdiction to award a particular relief in a certain matter, there could be no jurisdiction to entertain that matter. This contention of the learned Counsel, though plausible at first sight, is not sound. The word "jurisdiction" is used in two senses in law; one in a general sense and the other in a narrower sense. It may either mean what is ordinarily understood by that term when used with reference to the local jurisdiction of a Court, or pecuniary jurisdiction of a Court, or its jurisdiction with reference to the subject-matter of a suit; or it may mean the legal authority of a Court to do certain things. It seems that in this latter sense the word has been used in the English case when it was said that the direction to reinstate was ultra vires the tribunal. The tribunal, in one sense of the word "jurisdiction," may have power to entertain the dispute, though in another sense it may be said that it has exceeded its powers in granting a relief which it was not authorized to grant, just as a High Court may have power to entertain an application for revision under Section 622 of the Code of 1882 and yet it may have no power to remand a case under Section 578 of that Code, or a Subordinate Judge may have jurisdiction to entertain a suit of a certain value, yet some of the reliefs claimed may not be legally permissible. As observed in *Shew Prasad Bunshidhur v. Ram Chander Harilux*[6] the term "jurisdiction" may mean the legal authority of a Court to do certain things, namely, to make a particular order in a case over which it has jurisdiction.

20. In *Amritrav Krishna Deshpande v. Balkrishna Ganesh Amrapurkar*[7] West J. said as follows:

> Jurisdiction has two closely related, but distinct senses. It means sometimes authority,

> sometimes the exercise of the authority, and this either in investigation or by way of command.

21 Their Lordships of the Privy Council, in *Ryots of Garabandho v. Zamindar of Parlakimedi*[8] remarked:

> Jurisdiction -- if not a word of many meanings--is a word which may be used with either a wider or a narrower connotation.

22. Lord Goddard C.J., when he held that the direction to reinstate was ultra vires the tribunal, used the word 'jurisdiction' in the sense that in the exercise of its authority it exceeded the powers conferred upon it by the statute or by general law or equity. This is clear from the following observations in his judgment:

> There are no express words either in the regulation or in the order which in terms give the tribunal any power to reinstate, but it is said that as they have power to deal with any question relating to employment or non-employment it follows that they must have the power to make an award of reinstatement. It seems to me a strong thing to say, looking at this regulation which alone gives force to the order, that a power is thereby impliedly given to the tribunal to grant a remedy which no Court of law or equity has ever considered they had power to grant. If an employer breaks his contract of service with his employees either by not giving notice to which the latter are entitled or by discharging them summarily for a reason which cannot be justified, the workmen's remedy is for damages only. A Court of equity has never granted an injunction compelling an employer to continue a workman in his employment or to oblige a workman to work for an employer. If a workman, or any other employee who occupies a higher status than that usually implied by the term workman, breaks his contract with his employer, no injunction has ever been granted obliging that workman or employee to work for the employer. The most that has ever been done is that, if the contract was one by which for a certain period a person has agreed to serve another exclusively the workman or employee may be restrained from working for anybody else during the term for which he contractually engaged to serve his employer. Nor is there any provision in the regulation which imposes a penalty on the employer if he refuses after the award to re-employ the man, nor on the workman if, in spite of an award, he refuses to work for an employer. Suppose that after the award the workman sued his employer. He would be met at once-by the defence: 'I gave you the notice to which you were entitled, and, therefore, you have no remedy against me for breach of contract.' Again, supposing the employers out of deference to the award took the man back into their employment, I cannot find anything in the order or regulation which would disentitle-them to give notice the next day or next week in accordance with the terms of the contract to any individual workman or to all of them. It is true that this tribunal can do what no Court can, namely, add to or alter the terms or conditions of the contract of service. Express power to do so is given by the regulation while there are no words conferring a power to reinstate or revive a contract

lawfully determined.

From this it is clear that the learned Lord Chief-Justice treated the matter of reinstatement on. the footing of a relief of specific performance in law or equity. The discussion about the powers of a civil Court to enforce a contract under the Specific Relief Act is not directly relevant because it is clear that if an employment is determined according to the terms of the contract there will be no subsisting contract thereafter of which specific performance could be claimed. From the analogy of specific performance cases given by the Lord Chief Justice he appears to have held that the tribunal had no power to award the relief of reinstatement but it did not amount to a decision that the question of reinstatement was not covered by the definition of the words "trade dispute." All that was held was that the tribunal in the exercise of its jurisdiction had no power to grant the demand of reinstatement when the contract had been lawfully-determined as a Court of equity or law could not give it and there was no specific provision in the statute empowering the tribunal to grant that relief in such circumstances. The tribunal was given the power to alter the terms and conditions of the contract of service, but in clear-terms the power to reinstate was not conferred on it. As already pointed out, it was nowhere said that the question relating to employment or non-employment did not include within its ambit the question of reinstatement. The only observation that was referred to on this point runs thus:

> It seems to me a strong thing to say, looking at this regulation which alone gives force to the order, that a power is thereby impliedly given to the tribunal to grant a remedy which no Court of law or equity has ever considered they had power to grant.

This observation does not concern itself with the definition of the expression "trade dispute" but only relates to the remedy which the tribunal could eventually grant. The decision that the power to grant reinstatement could not be held to exist in the tribunal was given because such an unusual power could not be held to have been conferred by implication. Moreover, this result was reached on a consideration of the terms of the statute that was under consideration before the Court and which were materially different from the Indian statute. In sub-para. (5) of Article 2 of that Order it was provided as follows:

> Any agreement, decision or award made by virtue of the foregoing provisions of this article shall be binding on the employers and workers to whom the agreement, decision or award relates and, as from the date of such agreement, decision or as from such date as may be specified therein not being earlier than the date on which the dispute to which the agreement, decision or award relates first arose, it shall be an impliid term of the contract between the employers and workers to whom the agreement, decision or award relates that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be In accordance with such agreement, decision or award until varied by a subsequent agreement, decision or award.

The award of the tribunal was to become an implied term of the contract by force of the statutory provisions. In other words, the relief given by the award relating to the rates of wages and conditions of employment was automatically to become a part of the contract between the parties and enforceable as such. Nothing was said about an award directing reinstatement and hence it was held that reinstatement was not contemplated by that statute. No provision corresponding to

sub-para. (5) of Article 2 of the above Order exists in the Indian Act.

23. Another reason which was described as a cogent one by the learned Chief Justice, in reaching his decision, was that even if the relief of reinstatement was given by the tribunal, no method of compelling the employer to obey it, whether by means of prosecution or a civil action, had been provided in the regulation or the order. The question of enforceability of such a decision considerably affected the decision of his Lordship, It may be further noted that the Judges in that case were contesting the provisions of the Regulation and order 58AA with Order 58A which dealt with essential services only.

24. The case, however, is quite different so far as Act XIV [14] of 1947 is concerned. It has provided a sanction against disobedience of the award of the arbitrator. There are means provided within the Act compelling the party to obey the award. We are therefore of the opinion that that decision does not in any way affect the interpretation that we have placed on the definition of the expression "industrial dispute" as including within its ambit a dispute as to reinstatement. The judgment in Ex parte Horatio Crowther & Co., Ltd., (1948) 1 K.B. 424 at p. 435, negatived the power to grant the relief of rein-statement because, (a) such a relief was not ordinarily allowable in law or equity, (b) there was no provision in the English order under which a directive in regard to reinstatement in. an award could be made a part of the contract between the parties, like conditions of labour and employment, (c) no sanction or method was provided by which the relief, if granted, could be enforced, and (d) no suit at law was maintain-able for obtaining such relief by the workmen. It was suggested in that decision that the tribunal could make a recommendation as to reinstatement though it could not give a binding award.

25. It was argued that though a dispute as to wrongful dismissal of an employee and as to compensation for the same may be within the ambit of the definition, yet a dispute as to reinstatement was outside its scope. Two consequences naturally flow from a decision that a dismissal was wrongful, (1) that the employee is entitled to damages and (2) that he is entitled to reinstatement. That the dispute regarding one relief is within the jurisdiction of the tribunal, not qua the other seems illogical. If the principal dispute which relates to wrongful dismissal or to a dismissal for an unjust cause or as a result of victimization is within the ambit of the definition, all that flows incidentally and consequentially from such a dispute (even if that consequential matter is by itself a dispute), cannot-be held to be outside the scope of the words of the definition "employment or non- employment".

26. It' was argued at the Bar that an order of reinstatement would lead to startling results as such an order is a very unusual or extra-ordinary order in law, not being permitted by common law or equity. To our mind, the Court J is not concerned with the effects of an order, unless, of course, it is wholly incapable of enforcement. An order for reinstatement contained in an award can certainly be enforced by the coercive machinery provided by the statute.

27. It was pointed out that in Australia when the Commonwealth Conciliation and Arbitration Act was first passed in 1904, there was no provision therein for reinstatement or re-employment. That was expressly brought in by an amendment in 1912. Similarly, in America, there was no provision for reinstatement or re-employment till 1935 when it was also included in certain circumstances by express legislation. It was argued that these amendments deliberately made in the different statutes showed that without the amendment, re-employment or reinstatement of a

person was not covered by the definition of trade dispute. We do not think that such a consequence necessarily follows. The Legislature may have made the amendment to set at rest doubts which may have arisen. We have not before us the full history of the legislation in Australia or America on which reliance has been placed and we are therefore unable to consider this argument as sufficient to exclude the dispute about reinstatement or re-employment from the jurisdiction of the industrial dispute. However, relief by way of reinstatement has now been provided for expressly in a number of statutes. In Australia it was provided as early as 1912. It is provided in the several orders relating to emergency legislation in England. The same has been provided for under the Defence of India Rules in India in Rule 81. In U.S.A. it is contained in the Commonwealth Conciliation and Arbitration Act, 1935. No extra-ordinary consequence has flown by providing this relief expressly even though the only method of enforcing such relief is by the coercive machinery of law. Moreover, the relief is not of such an unusual character that it may be wholly ruled out as one of the legal reliefs which the Courts can grant. This relief of reinstatement is on the same footing as a relief of restitution. Restitution can be granted in integrum in certain cases. All that is required is that the ex-employee should be restored to his previous position so far as capacity, status and emoluments are concerned and there is nothing extraordinary in such restoration being ordered when considered necessary in the interests of peaceful settlement of industrial disputes. Adjudication does not, in our opinion, mean adjudication according to the strict law of master and servant. The award of the tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations. In Volume I of "Labour Disputes and Collective Bargaining" by Ludwig Teller, it is said at page 536 that industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements. In our opinion, it is a true statement about the functions of an industrial tribunal in labour disputes.

28. It was argued that the use of the definite article "the" before "employment" and the absence of the same before "non-employment" showed that employment and non-employment were two parts of the same event. It was con-tended that having regard to the order in which the words "employment and non-employment" were used, the dispute must start with the employer. If the employee objected to non-employment and the employer contended that he did not want the employee the dispute was not covered by the words, because the phrase started with the word "employment." This argument, which is based solely on the sequence of the words "employment and non-employment" does not deserve serious consideration. The absence of the article "the" before "non-employment" also leads to no con-elusion about the nature of dispute covered by the expression. The word "the" before "employment," grammatically read, will also be connected with non-employment.

29. It was argued that the Industrial Disputes Act should be interpreted so as to avoid repugnancy with the provisions of the Contract Act. In our opinion, no question of repugnancy arises, as the question before the Court is what disputes were covered by the definition of "industrial dispute" in Act XIV [14] of 1947. Once a particular dispute is found to fall under the definition of industrial dispute in the Act, the jurisdiction to decide the same rested with the Tribunal.

30. On behalf of the appellants it was also urged that the contention of the labour unions was that

the Industrial Disputes Act was framed to prevent victimization and to prevent the employers from interfering with workmen forming unions so as to be in a position to do collective bargaining. It was pointed out that the Legislature had made ample provision in Act XIV [14] of 1947 to prevent this mischief. Act XIV [14] of 1947 was an Act to amend the Trade Unions Act of 1926. In Section 28(k) of the Amending Act, unfair practices by employers were enumerated and by Section 32(a), Amending Act it was provided that any employer found guilty of unfair practice as defined in Section 28(k) shall be punishable with fine which may extend to L 1000. A closer examination of the Indian Trade Unions Act of 1926, read with the Amending Act, however, shows that the main object of these enactments was the registration and formation of trade unions and not for the purpose of defining the relations between the employers and the employees. Section 28(k) of the Amending Act XIV [14] of 1947 was enacted to prevent employers from interfering with the formation of trade unions and against preventing workmen from joining or helping in forming or working such unions. Reading the two Acts together, it is clear that they were not made to protect against the victimization of workmen as a result of an industrial dispute and this contention is repelled.

31. 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 workman, The non-employment "of any per-son" can amount to an industrial dispute between the employer and the workmen, falling under the definition of that word in the Industrial Disputes Act. It was argued that if the respondents represented the un-discharged employees, there was no dispute between them and the employer. That again is fallacious, because under the definition of industrial dispute, it is not necessary that the parties to the proceedings can be the discharged workmen only. The last words in the definition of industrial dispute, viz., "any person" are a complete answer to this argument of the appellants.

32. *The National Association of Local Government Officers v. Bolton Corporation*[9] was relied upon to help us in determining the meaning of "industrial dispute" in Act XIV [14] of 1947. "Trade dispute" in the (English) Industrial Courts Act, 1919, was defined in the same terms as "industrial dispute" in Act XIV [14] of 1947. In that case the question was in respect of the claim for remuneration of officers who ceased to serve the local Government staff in order to undertake war service in the forces of the Crown or civil defence to the level of remuneration which those officers would have received if they had continued to serve in their civil capacity. The Court held that this was a dispute about the term3 of their employment. Lord Wright in his judgment at page 189 expressly stated:

> I cannot see any good reason why the respondents should not agree in advance to make it a condition of amployment with their employers generally that this would be done. Nor can I see why, of the employees insist on that condition and the respondents refuse it, there is not a trade dispute.

That decision, therefore, does not help us in deciding whether the dispute about reinstatement is covered by the words "employment or non-employment" in the definition of "industrial dispute."

33 We are, therefore, of the opinion that no question of the jurisdiction of the Industrial Tribunal is involved in the case so as to entitle the High Court to issue any of the high prerogative writs in the case. The Tribunal has jurisdiction to adjudicate on the dispute and it can be trusted to do its duty and it cannot be said that it will give the reinstatement relief unless it thinks it is necessary to do so.

34. The result, therefore, is that the appeal fails and is dismissed with costs.

Cases Referred.

1(1943) A.C. 166 at p. 191
2(1943) 2 ALL E.R. 633
3(1920) 2 Ch. D. 70
4(1921) 1 Ch.p. l
5(1948) 1 K.B. 424
6A.I.R. (1) 1914 Cal. 388
7 11 Bom. 488
8A.I.R. (30) 1943 P.C. 164
91943 A.C. 166