

# **BOMBAY HIGH COURT**

Lalbai Tricumlal Mills Ltd

Vs.

Dhanubhai Motilal Vin

Special Civil Appn. No. 47 of 1955

(Chagla, C.J. and Desai, J.)

06.04.1955

## **JUDGMENT**

### **Chagla, C.J.**

1. This petition raises a rather interesting question as to the jurisdiction of the Labor Court to try a certain industrial dispute. The facts are very brief. Opponent 5 was employed by the petitioner mills in their branch office in Bombay and his services were terminated on 27-8-1953, when the branch office was closed. He wrote to the registered office of the mills in Ahmedabad complaining of his dismissal and claiming to be reinstated. No reply was sent to this letter and respondent 5 filed an application before the Labor Court for reinstatement and compensation. A point was raised by the petitioner that the Labor Court at Bombay had no jurisdiction to try and dispose of the application made by respondent 5, and the Labor Court made a reference to the Industrial Court under Section 81, Bombay Industrial Relations Act, 1946, and the Industrial Court has held that the Bombay Labor Court had jurisdiction. It is against that decision that the petitioner has come on this petition.

2. Now, under Section 9 the State Government is empowered to constitute one or more Labor Courts having jurisdiction in such local areas as may be specified in such notification, and a Labor Court has been constituted under this section for Bombay; and under Section 77 it is again emphasized that the territorial jurisdiction of Labor Courts shall extend to the local areas for which they are constituted. But neither Section 9 nor Section 77 throws any light as to what is the jurisdiction in relation to the subject-matter. Both Section 9 and Section 77 deal with the territorial jurisdiction of the Courts, but what we have to consider is in respect of what matters arising within that territorial jurisdiction the Labor Court has been empowered to dispose of application filed before it.

3. What is pointed out by Mr. Bhagwati, on behalf of the petitioner is that Section 78 of the Act

provides:

"(I) A Labor Court shall have power to-

A. decide-

(a) disputes regarding - (and we are here concerned with clause (iii) )

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out of such change";

and the 'Explanation' to that section provides

"A dispute falling under clause (a) of paragraph A of sub-section (i) shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of Section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso".

And when we turn to Sub-Section (4) of Section 42, it lays down:

"Any employee or a representative union desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, shall make an application to the Labor Court":

There is a proviso to this sub-section and the proviso is:

"Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period".

4. What is contended is that an industrial dispute only arises when an employee, dissatisfied by any action on the part of the employer approaches the employer in the manner laid down in the proviso to Section 42(4) and no agreement has been reached between the employer and the employee after that approach has been made, and Mr. Bhagwati says that till that approach takes place and the approach is found to be futile, there is no industrial dispute, and, says Mr. Bhagwati, in this case the approach was made at Ahmadabad, the approach did not result in an agreement, and therefore the dispute arose in Ahmadabad and only the Labor Court at Ahmadabad can entertain this application. Turning first to Section 42(4) and the proviso, it is clear that the proviso is procedural and it obliges the employee to comply with the condition precedent laid down in the proviso before he can approach the Labor Court. The proviso does not deal with the subject-matter of the industrial dispute at all, but it makes it necessary that certain

procedure has got to be followed before the employee becomes entitled to approach the Labor Court. The arising of the dispute at a particular moment has also been laid down for another reason and that is to provide the starting point of time for limitation, because under Section 79 (3) an application in respect of a dispute falling under Clause (a) of para. A of sub-section (i) of Section 78 shall be made if it is a dispute falling under sub-Clause (iii) of the said clause within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of Section 42. But what we are concerned with to decide is: where did the dispute substantially arise

5. Now, the Act does not deal with the causes of action, nor does it indicate what factors will confer jurisdiction upon the Labor Court. But applying the well known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction. and therefore the correct approach to this question is to ask ourselves - where did this dispute substantially arise - and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmadabad. What is the dispute? The dispute is not as to whether the employee approached the employer in Ahmadabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and inasmuch as the employment was in Bombay and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay. What Mr. Bhagwati says is that there is no dispute till an approach is made by the employee under tire proviso to Section 42(4).

It is true that there would be no industrial dispute till the procedure laid down in the proviso to Section 42(4) is satisfied, but in a more important sense there would be no dispute at all if there had been no dismissal by the petitioner of respondent 5. In order that there should be an industrial dispute, two ingredients are necessary. One is the fact than the employee should be aggrieved in one of the manners laid down in the Act, and the second is that he must comply with the procedure laid down in Section 42(4). If either ingredient is absent, there would be no dispute. But to suggest that because the industrial dispute will arise provided the second ingredient is complied with, one must completely ignore the first ingredient is to put forward a contention which is untenable. If, therefore, both the ingredients are necessary, the question that we have to ask is whether the first ingredient is sufficiently important to constitute substantially the subject-matter of the dispute, and there can be no doubt that what the Labor Court will be considering and deciding would be whether the employee was wrongly dismissed or discharged by the employer. If that is going to be the subject-matter of the inquiry before the Labor Court, that subject-matter arose in Bombay and not in Ahmadabad. We express no opinion as to whether the Ahmadabad Court would equally have jurisdiction or not. We are only concerned with deciding whether on these facts the Bombay Labor Court has jurisdiction, and in our opinion if as in this case the employee was employed in Bombay and dismissed in Bombay and he is making a complaint about his dismissal and wants reinstatement and compensation, the Bombay Labor Court has jurisdiction to decide this application. We, therefore, agree with the Industrial Court in the view it has taken.

6. The result is that the petition fails and must be dismissed with costs.  
Petition dismissed.