PUNJAB AND HARYANA HIGH COURT

Textile Workers Union Amritsar

Vs

State of Punjab

(Bishan Narain, J.)

03.05.1957

JUDGEMENT

Bishan Narain, J.

(1.) THE Governor of the Punjab issues a notification on 9 -1 -1956 and another one on 11 -1 -56 under Section 10, Industrial Disputes Act, 1947, read with Section 21, general Clauses Act. 1897, whereby the previous notifications under Section 10 were amended so as to exclude the disputes between the Oriental Carpet manufacturers (India) Limited, Amritsar, and its workmen and between the amritsar Rayon and Silk Mills limited, Amritsar, and its workmen from the purview of the Industrial Tribunal to which the disputes between all the textile and all other allied industries of Amritsar and their workmen had been previously referred for adjudication. The Textile Workers Union (Registered) Amritsar has filed these two separate writ petitions (Nos. 197 and 196 of 1956) to challenge the validity of these notifications On the ground that once 'the Government has referred a dispute for adjudication by the Industrial Tribunal un -der Section 10 (1) (c) of the act it is noropen to it to withdraw that dispute. These petitions are contested by the Punjab State and also by the industries concerned.

(2.) THERE is a fairly long history which has culminated in these notifications in dispute - By notification dated 6 -6 -1952, six disputes between the Textile Workers union (Registered), Amritsar, and the Textile Manufacturers Association (Registered), Amritsar, were fererred under Section 10 (1) (c) of the Act for adjudication bv the industrial Tribunal. By notification dated 21 -6 -1952, the same six disputes between the same Union and the Textile Mills and Factories in amritsar and Chheharta were referred for adjudication by the same Tribunal. By notification dated 9 -94952, the same disputes between the same Union and the textile Mills and Factories, represented by the Textile Manufacturers Association, amritsar, and other allied textile Associations were referred for adjudication. The governor then by notification dated 11 -10 -1952, amended the notification of 316 -1952, by making the dis -putes to be between the industries and the workers union as well as their respective workers. By notification dated 4 -12 -1954, the governor rescinded the notification dated 21 -6 -1952, as amended by notifications

dated 9 -9 -1952, and 11 -10 -1952. The result was that only the notification dat -ed 6 -6 -1952, remained operative which had referred these very disputes between the Textile Workers Union and the textile, Manufacturers Association, By another notification of the same date (4 -121954)the same disputes were referred for adjudication between the textile mills and factories, represented by the Textile Manu -facturers Association and all other allied textile factories etc. of Amritsar and Chheharta and the Textile Workers union. By a subsequent notification of 18 -3 -1955, the previous notification was amended and item No. J of the disputes which relates to reinstatement of retrenched workers was separated from the five items of dispute. I am informed that this was done to facilitate compromise and settlement between the parties concerned so far as it related to these five items and that in fact many such settlements were successfully made. There was then another notification by which the disputes relating to handloom industry, unregistered textile factories and other unregistered, allied units were excluded from the purview of the industrial Tribunal. This notification was issued on 30 -6 -1955. The original notification of 7 -12 -1954, was again amended on 9 -1 -1956 (by which the disputes between the Oriental Carpet Manufacturers (India) Limited and its workmen were excluded from the reference. Similarly by notification dated 11 -1 -1956, the disputes between the Amritsar rayon and Silki Mills and its workmen were excluded from tha reference. The present petitions challenge the validity of the amendments dated 9 -1 -1956, and 11 -1 -1956, by which the disputes relating to, these two industries and their workmen were withdrawn from adjudication by the Industrial Tri -bunal which was already seized of the same. Before discussing the case I may state that by notification dated 5 -5 -1956, a reference relating to all these textile industries, etc. was) withdrawn with the exception of the disputes relating to seven factories which are mentioned in that notification. I am informed that this was the consequence of the settlement and arrangements between the individual factories and their workmen. It is argued on behalf of the petitioning workmen Union that once a dispute is referred to the Tribunal the Government has no power to withdrawn it and the dispute must be adjudi -cated by the Tribunal. The learned counsel's argument is that if the dispute is settled before the award is made then the settlement may be incorporated in the Tribunal's award but the dispute cannot he withdrawn. The learned eounsel has relied in support of his contention on *D. N. Ganguly v. State of bihar*[1], which undoubtedly supports him. Section 10 (1) (c), Industrial Disputes Act, 1947, empowers an appropriate government to refer by an order in writing any industrial dis -putes which in its opinion exists or is apprehended. Section 21, General Clauses Act, 1897, lays down that when a power to make orders or issue notifications is conferred then that power includes a power to add to, amend, vary, or rescind any notification or order passed subject to the like conditions. One of the objects of the General clauses Act is to shorten the language of statutory enactments and this is achieved by specifically mentioning the power to make orders only as the power of addition etc. therein is automatically and" by necessary implication conferred on the authority by virtue of this section. If Section 10 (1) (c). Industrial Disputes Act, 1947, is read with Section 21, general Clauses Act, 1897, then there can be no doubt that the Government has the power to amend the previous notifications so as to exclude the disputes relating to the two respondent -industries. If in the opinion of the Government there is no existing dispuie nor is one apprehended it is for this reason

that the power to amend is not specifically mentioned in the Industrial Disputes Act, 1947. It is, however, urged that the provisions of the Industrial Disputes Act exclude the applicability of Section 21 to Section 10 (1) (c) of the Act. There is no such express provision in the Act and the argument is that the exclusion should be inferred by necessary implication. It is urged that Section 10 imposes a duty and obligation upon the State Government to refer an industrial dispute to the Tribunal if the prescribed conditions are satisfied and that Sections 16, 17, 17a, and 18 are also mandatory in character. These sections make it obligatory on the Tribunal to make an award after following certain procedure arid it has been laid down that such an award shall be binding on the parties. In view of the fact that these provisions are mandatory it is argued that when a reference has been made it must culminate into an award and the reference cannot be cancelled or withdrawn before an award is made.

(3.) IT is true that Section 10 is mandatory and that the other sections mentioned above also use similar language. This, however, does not, to my mind, make any difference to the application of Section 21, General Clauses Act, 1897, to the powers conferred under Section 10. If the Government after reference of the dispute and before the award is made comes to the conclusion that the nature of the dispute has changed or additional disputes have arisen then no violation of the provisions of the Act would be done if the order and notification is so amended or moulded as to bring it in consonance with the real dispute between the parties. Similarly if the Government comes to the conclusion that the industrial dispute has ceased to exist or is no longer apprehended then I see no reason why the government should not have the right to rescind the notification. It has been repeatedly held by their Lordships of the Supreme Court that the object of all labour legislations is firstly to ensure fair terms to the workmen and secondly to prevent disputes between employers and employees so that production may not be adverselv affected and the larger interests of the public may not suffer. In my opinion, this object can be better served by enabling the Government to vary, amend, or rescind the notifications under the Industrial Disputes Act rather than to allow those proceedings to continue even where such disputes had ceased to exist. It is well -known that conciliation between contending parties would be more easily achieved if there is a prospect of terminating arbitration proceedings before the Tribunal than where there is no such possibility. After all the provisions of the Industrial Disputes Act indicate that compulsory adjudication by the Tribunal is to be resorted to when all efforts to bring about a settlement between the parties have failed. No purpose at all will be served by compelling the parties to continue proceedings before the Tribunal even after it is known that the nature of the disputes has changed or that additional disputes have arisen or that they or some of them have ceased to exist. The learned counsel for the respondents has brought to my notice the decision of their Lordships of the Supreme Court in *Minerva Mills Ltd. , Bangalore v. Workers of the Min -verva Mills*[2]. It has been held in this decision that it is open to the Central Government to withdraw a dispute from one tribunal and refer it to another Tribunal. It has further been held that a Tribunal may be created for a limited time arid if the dispute cannot be adjudicated upon by the Tribunal within its lifetime then it can be withdrawn from that Tribunal and sent to another Tribunal. It, therefore, follows that it is not necessary that a dispute once referred to a Tribunal

must necessarily be decided by the same tribunal. It appears to me that if it is open to the Government to withdraw a dispute from a tribunal for whatever reason, there is no corresponding obligation to refer the dispute to another Tribunal. In the circumstances of the case the Governmenl may or may not do so. At least there is no express or implied provision in the Act to lead to that conclusion. This decision of their Lordships of the Supreme Court so far as it goes supports the view that the orders or notifications under the Industrial disputes Act can be rescinded or amended before the Tribunal concerned has given its award. I am conscious of the fact that this conclusion may have the effect of weakening a trade union's power of negotiation and may encourage the individual firms to deal directly with its own workmen but it is a matter of policy with which I have nothing to do in these proceedings. My conclusion, therefore, is that the Government has full power to amend or vary or rescind an order passed and a notification issued under Section 10, Industrial Disputes Act, 1947, even if it has the consequence of withdrawing particular disputes or disputes relating to particular industries from the reference already made to the Industrial Tribunal. At the end I may state that in the present cases the reference relating to the oriental Carpet Manufacturers (India) Limited, Amritsar, was withdrawn because the Government was satisfied that in this particular industry there never was any dispute between the management and its workmen and In the case of the amritsar Ravon and Silk Mills the Government was satisfied that after reference of the, dispute to the Tribunal the management and its workmen had settled disputes in presence of the conciliation' officer who had reported the matter to the government under Section 12 (3), Industrial Disputes Act, 1947. In these circumstances I see no compelling reason to come to the conclusion that it was incumbent upon the Government to allow the proceedings before the industrial Tribunal in stead of amending the notifications which had already been issued. For all these reasons I see no force in these two petitions and I dismiss both of them. As the petitioning Union had filed the petitions on a Question of principle, I leave the parties to bear their own costs. ;

Cases Referred.

1AIR 1956 Pat 449 (A)
2AIR 1953 S. C. 505 (B)