1955

THAKORE SAHEB KHANJI v. GULAM RASUL CHANDBHAI

Bavdekar J.

In that case, inasmuch as s. 86 has no application to the appellant, who has ceased to be a ruling chief when the suit had been filed, the trial Court had jurisdiction to try the suit against the appellant.

(The rest of the Judgment is not material to the Report).

Appeal dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL, INHERENT AND GENERAL JURISDICTION

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Desai.

1955 April 6

P. L. MAYEKAR, AND ANOTHER, APPELLANTS (ORIGINAL RESPONDENTS Nos. 2 & 3) *v.* AMICHAND NARAYAN, AND ANOTHER, RESPONDENTS (ORIGINAL PETITIONER AND ORIGINAL RESPONDENT No. 2).*

Industrial Disputes Act (XIV of 1947), ss. 2 (k) and (5) and 10 (1) (c)—Dismissal of employees—Dispute concerning re-instatement of such employees referred to Industrial Court—Whether Government had jurisdiction to refer case of dismissed employees to Industrial Tribunal?

A workman as defined in s. 2 (*s*) of the Industrial Disputes Act, 1947 means any person who is employed at any time in an industry. In order to determine whether an industrial dispute has been properly raised or referred, s. 2 (*k*) and s. 2 (*s*) must be read together. A dispute which is the result of a difference between employer and workmen and connected with the employment or non-employment or the terms of employment or conditions of labour of any person can be referred by Government under s. 10 (*1*) (*c*) of the Act and the Industrial Court can assume jurisdiction in respect of such dispute. The Industrial Court has, therefore, jurisdiction to try a dispute not only with regard to workmen dismissed during the pendency of the dispute but also those dismissed prior to the raising of such disputes.

P. L. M. and another, Appellants, employees of A. N., Respondents were dismissed prior to 1952. Certain demands were put forward by the Labour Union of which the Appellants were members and among the demands was one concerning the re-instatement of the Appellants. The Government of Bombay referred all these demands to the Industrial Court under s. 10 (*1*) (*c*) of the Act. On the question whether the Government had jurisdiction to refer and the Tribunal could assume jurisdiction to hear disputes as regards workmen dismissed prior to the raising of industrial dispute,

Held, that the Government was entitled to refer to Industrial Tribunal a dispute relating to workmen already dismissed and the Industrial Tribunal had jurisdiction to deal with such dispute.

Narendra Kumar v. *All India Industrial Disputes (Labour Appellate) Tribunal and another*[1] and *Western India Automobile Association* v. *The Industrial Tribunal, Bombay*,[2] referred to.

---

* Appeal No. 112 of 1954: Miscellaneous Application No. 210 of 1954.

1. [1954] Bom. 260.

2. [1949] 51 Bom. L. R. 894.

Facts material to this report are stated in the Judgment.

H. R. Gokhale, for Respondents.

S. V. Gpute with *M. A. Gagrat,* for Respondent No. 1.

R. M. Kantawala, for Respondents Nos. 4 and 5.

Chagla C. J.—This is an appeal against the decision of Mr. Justice Coyajee by which he quashed an order passed by the Industrial Appellate Tribunal, and he came to make the order under the following circumstances. Appellants Nos. 1 and 2 were employees of the first respondent and they were dismissed prior to 1952. Certain demands were put forward by the Labour Union of which the appellants were members and among the demands were reinstatement of these two dismissed employees, and the Government referred all these demands to the Industrial Court under s. 10 (c) of the Industrial Disputes Act. On June 18, 1953, the Industrial Tribunal made an award and directed the respondent No. 1 to reinstate the appellants from the date of their dismissal. There was an appeal to the Industrial Appellate Tribunal and on April 19, 1954, the Industrial Appellate Tribunal confirmed the award made by the Industrial Tribunal. The employer, the respondent No. 1 challenged this award before Mr. Justice Coyajee, and his contention was that the Government had no jurisdiction to refer to the Industrial Tribunal the cases of the appellants and the Industrial Tribunal had no jurisdiction to deal with those cases. Mr. Justice Coyajee upheld the contention of the employer and the two dismissed employees have now come in appeal.

What is argued by Mr. Gupte on behalf of the employer is that looking to the definition of "industrial disputes" and "workman", inasmuch as the appellants were dismissed prior to the reference made by Government on September 16, 1952, they did not fall within the definition of "workman" and no industrial dispute could be raised with regard to them. We will presently examine this contention, but it seems to us rather a startling submission to make that under the Industrial Disputes Act a workman who has been wrongly dismissed cannot raise an industrial dispute with regard to his wrongful dismissal. We should have thought that the very purpose of labour legislation was to prevent employers wrongfully dismissing their employees and if they did so to confer jurisdiction upon Labour Courts to adjudicate upon the question as to whether the employee was wrongfully dismissed or not and also to confer jurisdiction upon Labour Courts in the case of a wrongful dismissal to compel the employer either to reinstate the employee or to pay compensation. But as the argument has been seriously urged by Mr. Gupte and has been accepted by the learned Judge below, we must proceed to examine that argument.

1955

P. M. MAYEKAR v. AMICHAND NARAYAN

Chagla C. J.

Now, "industrial dispute" is defined in s. 2 (*k*) and the definition is:

> "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;

And "workman" is defined in s. 2 (*s*) and it is an exhaustive definition to the effect that it means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward, and then the definition includes within the ambit of "workman" something more and that is "for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government." Without looking at the authorities, on a plain construction of this section, it is not possible to accept the contention of Mr. Gupte that a workman means a person who was employed at the date when the dispute was referred by Government under s. 10 (*1*) (*c*). Mr. Gupte contends that if a workman has already been dismissed no industrial dispute can be referred with regard to his dismissal to the Industrial Court. Now, the definition of "workman" does not indicate that the workman must be employed at a particular moment of time. What is emphasised is that he must be employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward; in other words, the definition is intended to point out what the nature and characteristic of a person is who can be deemed to be a workman within the meaning of the Act. In our opinion, a workman as defined in this sub-section means any person who is employed at any time in an industry. If he satisfies the definition of "workman" under s. 2 (*s*), then whether he can raise an industrial dispute or not must be judged by the definition of "industrial dispute" given in s. 2 (*k*). Therefore, in order to determine whether an industrial dispute has been properly raised or referred, one must read s. 2 (*k*) and s. 2 (*s*) in conjunction. If, therefore, the dispute is the result of a difference between employees and workmen or an employer and a workman and that dispute is connected with regard to employment or non-employment or the terms of employment or with the conditions of labour of any person, then the dispute as such can be referred by Government under s. 10 (*1*) (*c*) and in respect of which the Industrial Court can assume jurisdiction.

What is urged by Mr. Gupte is that the only dismissed workman in respect of whom an industrial dispute is raised is a workman who has been dismissed during the pendency of an industrial dispute. Therefore the rather curious contention

urged is that the definition of "workman" limits the jurisdiction of the Industrial Court to try only those disputes with regard to dismissed workmen who have been dismissed during the pendency of a dispute, but if a workman is dismissed prior to the raising of the dispute then the Industrial Court has no jurisdiction to entertain that dispute. To analyse that argument in a different way, what Mr. Gupte urges is that if a workman is dismissed he cannot raise any dispute with regard to his own dismissal because the industrial dispute must follow upon his dismissal, but if some other dispute is pending and he is dismissed he can raise a dispute with regard to his dismissal. The result of accepting this contention is apparent even to Mr. Gupte himself and therefore he is compelled to say that undoubtedly this shows a rather serious lacuna on the part of the Legislature in enacting this Act. But before we accuse the Legislature of being guilty of serious blemishes in the drafting of a statute, it is the duty of the Court to see whether a fair and reasonable interpretation can be put upon the language used by the Legislature bearing in mind the object which the Legislature had in placing a particular piece of legislation on the statute book. There is no reason whatever, looking to the definition of "workman", to restrict the expression "employed" to the point of time which Mr. Gupte suggested it should be restricted. So long as the workman was employed by the employer against whom he wishes to raise the industrial dispute and the dispute is of the nature required by the definition of "industrial dispute", he is a workman falling within the definition of s. 2 (*s*).

Turning to the authorities, reliance is first placed on a decision of this Court in *Narendra Kumar* v. *All India Industrial Tribunal*.[3] What we were considering there was the proper interpretation to be placed upon the expression "any person" used in s. 2 (*k*). We realised that the Legislature in that section had used a wider expression than the expression "workman" used in the earlier part of that sub-section, and what was urged before us was that the expression 'any person" was so wide that no restriction should be put by us upon construing that expression. We negatived that contention and we pointed out that the expression "any person" must be understood as implying two important restrictions and the two restrictions were that the dispute with regard to any person must be a controversy in which the workman raising it against his employer is directly and substantially interested and it must also be a grievance which the employer was in a position to remedy. Now, in this case it so happens that the reference was sought by the Trade Union and not by the appellants themselves and therefore Mr. Gupte relies on this decision for the proposition that as the reference was by the

3. [1953] 55 Bom. L. R. 125.

1955

P. M. MAYEKAR v. AMICHAND NARAYAN

Chagla C. J.

Trade Union it must be with regard to a question of non-employment of any person as construed by us in this decision, and Mr. Gupte says that this worker who was dismissed before the dispute cannot satisfy the definition of "any person". It is difficult to understand why the principle laid down by us in this decision does not apply to the facts of the case before us. Assuming that the Trade Union was raising the dispute on behalf of any person, in that controversy the Trade Union was vitally interested and the grievance that they made, viz., that the employer had wrongfully dismissed the employee, was a grievance which could have been remedied by the employer. Therefore both the conditions laid down by us in that decision are satisfied.

Reliance is then placed on a judgment of the Supreme Court in *Western India Automobile Association* v. *Industrial Tribunal, Bombay.*[4] That was a judgment given in appeal against a judgment of this Court, and the only question that arose before the Supreme Court, as indeed it arose before us, was whether the Labour Courts had jurisdiction to order reinstatement of a dismissed servant, and it was in that connection that the Supreme Court was called upon to consider the expression "employment" or "non-employment" used in 2 (*k*). Now it so happened that in that case the worker was dismissed pending an industrial dispute and the question arose with regard to his reinstatement, and therefore the Supreme Court had to consider the definition of "workman" given in s. 2 (*s*) in the light of the latter part which includes, as already pointed out, the case of a workman dismissed during the pendency of a dispute. The decision of the Supreme Court does not lay down the proposition for which Mr. Gupte is contending that when a workman is dismissed he would fall within the definition of "workman" given in s. 2 (*s*) only if he is dismissed during the pendency of an industrial dispute.

Mr. Gupte then argued that if that be the correct view, then it was unnecessary for the Legislature to provide for the case of a workman who had been dismissed during the pendency of an industrial dispute. In our opinion, it was very necessary that that case should be provided for because but for that expression of the meaning of the expression "workman" an Industrial Court would have no jurisdiction to entertain an application with regard to the dismissal of a workman which had taken place after the industrial dispute had been raised and which was pending before it. Therefore, this latter part of the definition of "workman" extends the meaning of workman and extends the ambit of the jurisdiction of the Industrial Court. Instead of reading this latter part of the definition as an extension of the meaning of the expression "workman", Mr. Gupte wants us to

4. [1949] 51 Bom. L. R. 894.

read it as a qualification or a limitation upon the meaning of the word "workman" or rather as a proviso to what the Legislature has already indicated earlier in s. 2 (*s*). That in our opinion is an entirely wrong canon of construction. The Legislature, in the first place, gives the meaning of the expression "workman" and then, because a certain case does not fall within that definition, it proceeds to enumerate that case and provides that that case will also fall in the definition already given of the expression "workman". Therefore, in our opinion, it would be wrong to confine the case of a dismissed workman to the latter part of s. 2 (*s*). In our opinion, the case of a dismissed employee who wishes to raise an industrial dispute false directly within the definition of "workman" and it is only in cases where a workman has been dismissed pending an industrial dispute that we must look to the latter part of the definition of s. 2 (*s*). In our opinion, both the Industrial Court and the Industrial Appellate Tribunal had jurisdiction to decide the dispute with regard to the two appellants. In our opinion, therefore, with respect, the learned Judge was in error in holding that the Industrial Appellate Tribunal had no jurisdiction.

The result is that the appeal must succeed. The order of the learned Judge will be set aside and the order of the Industrial Appellate Tribunal restored.

The respondent No. 1 must pay the costs of the appellants throughout. Mr. Kantawala's clients to bear their own costs.

Liberty to the appellants' attorneys to withdraw the sum of Rs. 500 deposited in Court.

Attorneys for Appellants: *N. Tijoriwalla & Co.*

Attorneys for Respondents: *Little & Co., and Nanu Hormusji & Co.*

Appeal allowed.

P. M. P

APPELLATE CIVIL

Before Mr. Justice Chainani and Mr. Justice Gokhale.

THE STATE OF BOMBAY (ORIGINAL DEFENDANT NO. 2), APPELLANT *v.* KAYASTHA NAGINDAS MANEKLAL AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1955
April 13

Bombay Finance Act (Bom. II of 1932), ss. 22 proviso (2), 21 (7), 21 (2) —Bombay Municipal Boroughs Act (Bom. XVIII of 1925), ss. 73, 3 (2) —Assessment of urban immovable property tax—Building constructed by three cousins as one unit from joint funds—Subsequent partition of building between three cousins into three portions—Whether three

* Second Appeal No. 1562 of 1952 with Second Appeals Nos. 1953 and 1564 of 1952.