purchased as a single plot in 1940. The three suit properties were also constructed as one unit at the same time from joint funds. They have also one continuous terrace. The built portion of the plot was subsequently partitioned between the planitiffs in the three suits, but a strip of land was kept joint for common use. On these facts, in our opinion, the three suit properties must be regarded as three tenements in one building.

The appeals must therefore, be allowed. The decrees passed by the trial Court and confirmed in appeal by the Extra Assistant Judge are set aside and the suits will be dismissed. In the circumstances of these cases, we direct that the parties should bear their own costs throughout.

Appeals allowed.

K. B. S.

APPELLATE CIVIL

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

M. D. THAKUR, PETITIONER *v.* THE LABOUR APPELLATE TRIBUNAL OF INDIA AT BOMBAY AND ANOTHER, RESPONDENTS.*

1955 *Aug.* 18

Certiorari, writ of—Constitution of India, arts. 226, 227—Labour Appellate Tribunal granting permission to retrench workmen—High Court quashing the order of the Tribunal on a writ of Certiorari—Tribunal granting permission again to retrench workmen—Whether Tribunal competent to do so after once its order is quashed—Nature and scope of Certiorari—High Court's powers under art. 227.

The writ of Certiorari is a high prerogative writ which enables the High Court, a Court of Record, to correct the orders and decisions of inferior Courts and Tribunals discharging judicial functions. But the High Court does not act as a Court of appeal and does not substitute its own order on the merits of the case for the order which it quashes. If the order is quashed, the inferior Court or Tribunal is left at large to pass any proper order in the light of the decision of the High Court.

Under art. 227 of the Constitution, on the other hand, the High Court exercises a supervisory jurisdiction and although it is loth to interfere lightly with the decisions of Courts and Tribunals which are final by law, it has the power not only to quash an order made by the Court or Tribunal but to pass a substantive order in place of the order so quashed.

Mahomed Usman Rahimtoola v. *The Labour Appellate Tribunal*,[1] referred to.

Special Civil Application against an order passed by the Labour Appellate Tribunal, at Bombay.

On May 27, 1955, Ruston and Hornsby (India) Ltd. (Respondent No. 2) made an application to the Labour Appellate Tribunal at Bombay, under s. 22 of the Industrial Disputes Act,

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* Special Civil Appication No. 1507 1955.

1. (1952) 54 Bom. L. R. 513.

1955

M. D. THAKUR v. LABOUR APPELLATE TRIBUNAL OF INDIA, BOMBAY

Chagla C. J.

1947, for retrenchment of 142 of their workmen on the ground that they wanted to shift their factory from Bombay to Chinchwad in Poona as they wanted to extend the factory. The Tribunal allowed the application and the employees having made a petition to the High Court for a writ of Certiorari, the High Court quashed the order on June 30, 1955. Thereafter on July 4, 1955, Respondent No. 2 applied to the Labour Appellate Tribunal that their application should be further heard and considered. The Tribunal heard the application and granted permission for retrenchment in respect of 126 workmen.

The petitioner, an employee of the respondent No. 2 applied to the High Court under arts. 226 and 227 of the Constitution.

K. T. Sule, with *D. S. Nargolkar*, for the Petitioner.

P. P. Khambata and *N. A. Palkhiwala*, with *Crafword Bayley & Co.*, for Respondent No. 2.

Chagla C. J.—This is a petition challenging an order passed by the Labour Appellate Tribunal granting permission to the respondent No. 2 to retrench 126 of their workmen. The few facts which lead up to this petition may be stated. On May 29, 1955, the respondent No. 2 made an application for retrenchment of 142 of their workmen to the Labour Appellate Tribunal under s. 22, and the ground put forward by them was that they wanted to shift their factory which was in Bombay to Chinchwad in Poona as they wanted to extend their factory. The Tribunal granted the application. A petition was presented against this order to this Court and this Court on June 30, 1955, quashed the order. On July 4, 1955, the respondent No. 2 applied to the Labour Appellate Tribunal that their applications should be further heard and considered. The application was heard and permission was granted in respect of 126 workmen, and this is the order that is now sought to be challenged by this petition.

The first ground which is a novel ground and which has been very ingeniously argued by Mr. Sule is that in law once an order has been quashed by the High Court on a writ of certiorari, no further order can be made on the application. It is contended that the result of quashing the order is to put an end to all proceedings connected with the application on which the order was made; that the record having been sent for, the record remains with the High Court and no further action can be taken in relation to that record. The argument on the face of it seems a little startling, but Mr. Sule has urged that there is high authority for the proposition and we must seriously consider it. Before we consider the authority let us be clear in our minds as to the nature of a writ of certiorari. It is a high prerogative writ which had its origin on historical grounds in England. But the purpose it serves in England now is that it enables a superior Court, a Court of record, to correct the orders and decisions of inferior Courts and inferior Tribunals discharg-

ing judicial functions. If an order is made without jurisdiction or if a Court or a Tribunal refuses to exercise jurisdiction vested in it in law, or if there is an error of law patent on the record, the High Court in England by means of the writ of certiorari corrects the errors in jurisdiction or in law of inferior Courts and Tribunals. But it is equally clear and well established that the superior Court does not act as a Court of appeal. It does not substitute its own order on the merits of the case for the order which it quashes of the inferior Court or Tribunal. If the order is quashed the inferior Court or Tribunal is left at large to pass any proper order in the light of the decision of the High Court. If, on the other hand, the High Court refuses to interfere on a writ of certiorari and discharges the rule and dismisses the petition, then the order of an inferior Court or Tribunal stands and assumes the necessary finality. But whether the High Court quashes the order or dismisses the petition, it exercises a limited jurisdiction and that jurisdiction under no circumstance can be comparable to the jurisdiction exercised by the High Court on the Appellate Side or even in its revisional powers under the Civil Procedure Code.

We had occasion to point this out in a decision reported in *Mahomed Usman* v. *Labour Appellate Tribunal.*[2] There Mr. Justice Shah quashed the order of the Labour Appellate Tribunal and remanded the matter to the Tribunal for hearing and when the matter came in appeal Mr. Justice Bhagwati, as he then was, and myself pointed out that no substantive order can be made by the High Court when it quashes the order of a judicial tribunal on a writ of certiorari, and we further pointed out that the High Court was not concerned with what would or should happen after the order of the Appellate Tribunal was quashed. A further point must be borne in mind in connection with the power of the High Court to deal with subordinate Courts and Tribunals. A very wide and extensive power is conferred upon the High Court under art. 227 of the Constitution, a power which has never been exercised and can never be exercised by the High Court in England. When the High Court exercises its jurisdiction under art. 227 of the Constitution it is exercising a supervisory jurisdiction and although it may be loath to interfere lightly with the decisions of Courts and Tribunals which are made final by law, it has undoubtedly the power not only to quash the orders made by these Courts and Tribunals but to pass substantive orders in place of the orders it has quashed or set aside. Therefore it is necessary to bear in mind, whenever a case of interference with a decision of a Labour Court or Tribunal comes up, whether the High Court is acting in exercise of jurisdiction in respect of a high prerogative writ or is acting under art. 227 of the Constitution.

2. (1952) 54 Bom. L. R. 513.

1955

M. D. THAKUR v. LABOUR APPELLATE TRIBUNAL OF INDIA, BOMBAY

Chagla C. J.

In the case before us, when the matter came to the High Court, Mr. Justice Bavdekar and Mr. Justice Shah obviously dealt with the matter as if it was a writ of certiorari and all that they did was to quash the order of the Labour Appellate Tribunal. No substantive order was passed by the learned Judges; indeed they did not intend to do so because they gave certain directions to the Labour Appellate Tribunal as to how the matter should be dealt with. Therefore the learned Judges intended that the matter should be finally disposed of by the Labour Appellate Tribunal. Mr. Sule says it was open to the learned Judges to remand the matter to the Labour Appellate Tribunal under art. 227 and because they have not done so the Labour Appellate Tribunal had no jurisdiction to deal with the matter. If the learned Judges had dealt with the matter under art. 227 undoubtedly they could have passed this order, but as they chose to act under art. 226 and quash the order of the Tribunal on a writ of certiorari, in view of our decision in *Mahomed Usman* v. *Labour Appellate Tribunal,* with respect, they acted correctly and did not give any direction for rehearing to the Labour Appellate Tribunal. But it is difficult to understand what would be the fate of the application made by the respondent No. 2 if on the order being quashed by the High Court the application did not survive and no further effective order could be made on that application. All that the High Court did was to quash a particular order made on the application of the second respondent by the Labour Appellate Tribunal. The High Court did not deal with the application, nor did it pass any substantive order on that application. Therefore, on the order being quashed the application was again at large and some effective order had to be made by some authority. Therefore, in our opinion, the Labour Appellate Tribunal had jurisdiction, indeed it was its duty so to act, to deal with the application when the second respondent company asked the Labour Appellate Tribunal to dispose of the application it had made.

The authority on which Mr. Sule relies is an old decision of the English Court reported in *Overseers of the Poor of Walsall* v. *London & North Western Railway Co.*[3] Mr. Sule was frank enough to concede that although this case was noted by several authorities both in England and in India it was never cited for the proposition for which he was contending before us. Indeed he had even to concede that although he had made researches in all the text books on high prerogative writs, he did not come across anywhere a proposition that once an order of a subordinate Court or Tribunal had been quashed, that Court or Tribunal had no jurisdiction to deal further with the matter. But he says that the proposition clearly emanates from the decision on which he is relying and if this decision is still good law, then we

3. (1878) 4 A. C. 30.

must follow this decision. The decision is of the House of Lords, a very high authority, and we should indeed be extremely reluctant to take a different view from the House of Lords on a matter which would be much better known to English Judges and Jurists dealing with high prerogative writs than to us here to whom such a writ is a foreign growth. Before we look at the observation on which reliance is placed we should look at the facts in the context of which the House of Lords made certain remarks. The overseers of Walsall assessed the property of the respondents at a particular rate. The respondents disputed that rate and they appealed to the borough quarter sessions and the borough quarter sessions ordered that the rate be amended by reduction of the amount. The matter went to the Queen's Bench Division and the Queen's Bench Division discharged the rule for certiorari which was issued by the Queen's Bench Division and confirmed the order of the borough quarter sessions. From the decision of the Queen's Bench Division an appeal was preferred to the Court of Appeal and the Court of Appeal held that it had no jurisdiction to hear the appeal. The matter went to House of Lords who held that the decision of the Queen's Bench Division was subject to appeal, and at page 44 Lord Penzance says (p. 44):

"But, as was well pointed out by the learned counsel for the Appellants the *certiorari* itself bringing up the proceedings, independently of the order subsequently made upon it, put an end to all further jurisdiction in the Court of Quarter Sessions to deal with the matter. Therefore the Judges of the Queen's Bench then had the proceeding before them and could either quash it or could let it stand; but the magistrates in quarter sessions were then *functi officio;* they could no longer deal with the matter either by way of affirming or of quashing the order."

This is perfectly, with respect, correct because the Magistrates of the Quarter Sessions having made the order and the Queen's Bench Division having confirmed that order by discharging the rule for a writ of certiorari, the Magistrates become *functi officio.* Their order having been confirmed, they could not interfere with that order or deal with that order as the application of the respondents for reducing the rate had been heard and finally disposed of by the Magistrates. It is in this connection and under these circumstances that Lord Penzance made these observations, and as we have already stated earlier, that is the true position when the High Court dismisses a petition for a writ of certiorari, thereby finally confirming the order challenged. Reliance is also placed on the observations of Lord O'Hagan. The learned Law Lord says (p. 49):

"The order is absolute, and all people are bound and expected to obey it without, as I understand, any farther intervention from the quarter sessions."

This observation is relied upon for the contention that the High Court having quashed the order of the Labour Appellate Tribu-

1955

M. D. THAKUR v. LABOUR APPELLATE TRIBUNAL OF INDIA, BOMBAY

Chagla C. J.

nal that order cannot be in any way interfered with by the Labour Appellate Tribunal. But the Labour Appellate Tribunal is not interfering with the order of the High Court. On the contrary it is respecting that order and carrying out its directions. It could only be said of the Labour Appellate Tribunal that it was interfering with the order if the High Court had confirmed the order and dismissed the petition for a writ of certiorari presented by the respondent No. 2 in the first instance. Therefore in our opinion there is no force in that contention put forward by Mr. Sule.

[The rest of the Judgment is not material to the Report.]

Rule discharged.

K. B. S.

APPELLATE CIVIL

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

1955 *Sept.* 1

ISMAIL PAPAMIA AND OTHERS, PETITIONERS *v.* THE LABOUR APPELLATE TRIBUNAL OF INDIA AND ANOTHER, RESPONDENTS.*

Industrial Employment (Standing Orders) Act (XX of 1946), ss. 7 and 9 —Whether the provisions of s. 9 requiring the text of the standing orders to be prominently posted by the employer in the language understood by the majority of his workmen mandatory—Construction of Statutes.

The provisions of s. 9 of the Industrial Employment (Standing Orders) Act which requires that the text of the Standing Orders should be posted by the employer prominently in the language of the majority of workers are not mandatory.

Special Civil Application under arts. 226 and 227 of the Constitution of India against the decision of the Labour Appellate Tribunal.

The facts are fully stated in the Judgment.

K. T. Sule with *Kamdar & Co.*, for the Petitioners.

S. D. Vimadalal with *Bhaishankar Kanga & Girdharlal* for Respondent No. 2.

Chagla C. J.—This petition raises a rather interesting question of construction of ss. 7 and 9 of the Industrial Employment (Standing Orders) Act (Act XX of 1946).

The second respondent company applied to the Industrial Tribunal under s. 33 of the Industrial Disputes Act for permission to dismiss 27 of its employees. Its contention was that there was an illegal strike on November 11, 1953, of the workers of the company, that these 27 employees had participated in the illegal strike and they had also refused to obey lawful orders.

* Special Civil Application No. 1435 of 1955.