CIVIL WRIT

Before Falshaw, J.

THE MANAGEMENT, THE HINDUSTAN TIMES LTD., NEW DELHI,—*Petitioners*

v.

THE CHIEF COMMISSIONER, DELHI, AND OTHERS,—*Respondents*

Civil Writ No. 191 of 1956.

1956

Dec. 18th

Industrial Disputes Act (XIV of 1947)—"industrial dispute"—Definition of—Whether includes a dispute in regard to reinstatement of employees dismissed before the dispute. Dispute between an employer and an individual employee—Whether covered.

Held, that the definition of the expression "industrial dispute" is worded in very wide terms, which, unless they are narrowed down by the meaning given to the term workman would include all employees, all employment and all workmen. Reinstatement is the employment of a person non-employed and is within words "all employment". Reinstatement is connected with non-employment and is within the words of the definition. The fact that an employee is dismissed before the dispute arose about the question of his dismissal and re-instatement, does not in itself make the dispute not an industrial dispute for the purposes of the Industrial Disputes Act.

Held also, that circumstances may exist in a particular case which may make a dispute between an employer and an individual employee an industrial dispute.

Western India Automobile Association v. *The Industrial Tribunal, Bombay and others* (1), *Central Provinces Transport Services Ltd., Nagpur* v. *Shri Raghunath Gopal Patwardhan* (2), *Sri Ram Villas Services Ltd.* v. *State of Madras* (3), relied upon. *Narendra Kumar Sen and others* v. *All-India Industrial Disputes (Labour Appellate) Tribunal and others* (4), not followed.

(1) A.I.R. 1949 F.C. 111
(2) Supreme Court Civil Appeal 320 of 1956
(3) A.I.R. 1956 Mad. 115
(4) A.I.R. 1953 Bom. 325

Petition under Article 226 of the Constitution of India, praying that the order of reference, dated the 14th of February, 1956, be quashed as illegal. A writ of prohibition be issued to the Additional Industrial Tribunal, Delhi, to restrain it from taking cognizance of the dispute which is not an Industrial Dispute and to proceed further upon the reference and this Hon'ble Court may issue such other appropriate directions, orders or writs as this Hon'ble Court may consider proper and further praying that during the pendency of the petition, the proceedings pending before the Additional Industrial Tribunal, Delhi, be ordered to be stayed. The petitioner also prays that the costs of the petition be awarded.

M. L. SETHI, ANAND PRAKASH and VIDYA DHAR MAHAJAN, for Petitioner.

HARDYAL HARDY, BISHAMBAR DAYAL and P. C. KHANNA, for Respondents.

ORDER

FALSHAW, J.—This is a petition under Article 226 of the Constitution by a Company, The Hindustan Times Limited of New Delhi, challenging the reference by the Delhi State Government under sections 10(1)(c) and 12 (5) of the Industrial Disputes Act, of 1947, of an alleged industrial dispute between the management of the Company and its editorial workmen to an Industrial Tribunal. Falshaw, J.

Briefly stated the facts are as follows. M. L. Madan, respondent No. 3 entered the employment of the Company as a Sub-Editor in January, 1950. The terms of his employment are contained in annexure 'B' to the petition providing *inter alia* that he should be paid Rs. 300 per mensem in the grade of Rs. 200—20—400 and that his appointment should be for three years, terminable thereafter on two months' notice by either side. Apparently in December, 1955 he was found guilty of some error in his work as regards one of

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the front page headlines which resulted in the press having to be stopped after 300 copies of the following day's issue had been printed, and the correction resulted in a delay in the issuing of the paper, and on the 10th of December he was informed by the News Editor that he need not report for duty again until he received further instructions. The respondent apparently objected and tried to get this order set aside but finally he was dismissed from the Company's service by the Managing Editor on the 23rd of December.

M. L. Madan was apparently a founder member and a member of the executive committee of the Delhi Union of Journalists, and although it was the case of the Company that he had been dismissed on account of inefficiency, it being alleged that the mistake which resulted in his dismissal was not by any means the first of such mistakes which he had made, it is the case of M. L. Madan and also the Union that the real cause of his dismissal was that he had incurred the displeasure of the management of the Company by his activities in connection with the Union, or in other words that his dismissal was an act of victimisation. In these circumstances the Union immediately took up his case and proceedings were instituted without delay by the Union on his behalf before the Conciliation Officer appointed under the Industrial Disputes Act. Both parties presented their cases before this officer on various dates in December 1955 and January, 1956, but the Conciliation Officer was unable to bring about any kind of reconciliation between the parties. The net result was that Dr. B. R. Seth, Director of Industries and Labour under the Delhi State Government, drew up his report on the 24th of January, 1956, in which, after summarising the cases advanced on behalf

of both parties to the dispute, he expressed the opinion that an industrial dispute existed which required reference to an Industrial Tribunal and proposed that the terms of reference should be "Whether the termination of service of Shri M. L. Madan, Sub-Editor is wrongful and to what relief he is entitled." In pursuance of his recommendation the reference was made by an order, dated the 14th of February, 1956. The present petition, challenging the validity of the reference, was apparently filed in this Court on the 21st of May, 1956.

One point on which the validity of the reference is challenged may conveniently be dealt with first. This is the argument advanced on behalf of the Company that only a dispute between workmen and their employers could be referred to an Industrial Tribunal and M. L. Madan was not a workman within the meaning of the definition contained in section 2(s) of the Industrial Disputes Act, even though that definition had been extended by the Working Journalists (Conditions of Service) and Miscelleneous Provisions Act, 45 of 1955 which made Act 14 of 1947 applicable to working journalists. The definition in section 2(s) reads—

> "'Workman' 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 includes, 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."

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On the strength of this definition it was argued that the term 'workman' means only either somebody still in employment or somebody who has been discharged during the pendency of the industrial dispute and does not include a person who was discharged before the dispute arose, and whose discharge has in fact occasioned the dispute. No doubt some support for this view is to be found in the judgment of Chagla, C.J., and Shah J. in the case of *Narendra Kumar Sen and others* v. *All-India Industrial Disputes (Labour Appellate) Tribunal and others* (1), and in some decisions of Labour Tribunals reported in Labour Law Journal, but it seems to me that this view is completely at variance with the view expressed by the Federal Court in *Western India Automobile Association* v. *The Industrial Tribunal, Bombay and others* (2), and reaffirmed in a recent decision of the Supreme Court as yet unreported in *Central Provinces Transport Services Ltd., Nagpur* v. *Shri Raghunath Gopal Patwardhan* (3), decided on the 6th of November, 1956. In the first of these cases the judgment was delivered by Mahajan, J. on behalf of himself and Kania, C.J., Fazl Ali, Patanjali Sastri and B. K. Mukherjea, JJ., and he has discussed the matter as follows :—

> "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*

(1) A.I.R. 1953 Bom. 325
(2) A.I.R. 1949 F.C. 111
(3) C.A. No: 320 of 1956

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 either 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.

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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 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

(1) 1943 A.C. 166

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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."

In the later decision of the Supreme Court an employee of a transport company was suspected of being responsible for the loss of some goods by theft in June, 1950, and after an enquiry he was dismissed the same month on grounds of gross misconduct and negligence. After that he was prosecuted on a charge of theft but was acquitted in March, 1952, after which he applied to the Company for reinstatement in his employment. On failing to get satisfaction he applied to the Labour Commissioner under the provisions of the C. P. and Berar Industrial Disputes Act, 23 of 1947. The Company raised the plea that as he had been dismissed in 1950 he was not an employee. The decision of the Federal Court was cited in the Supreme Court and an attempt was

made to distinguish it on the grounds that a different statute was now involved and that in any case in the *Western India Automobile Association's case* (1), the reference to the Industrial Tribunal was valid because there were other points referred as well as the question of the reinstatement of a particular employee. Both these contentions were repelled and agreement was expressed by Venkatarama Aiyar J., who delivered the judgment of the Court with the view that the definition of 'employee' in the Act would include one who has been dismissed. I, therefore, hold that the fact that M. L. Madan was dismissed before the dispute arose in this case, and in fact the dispute arose about the question of his dismissal and reinstatement, does not in itself make the dispute not an industrial dispute for purposes of the Act and that the reference is not invalid on this account.

The next argument was that the order of reference is wrong in stating that there exists a dispute between the Company and its editorial workmen, and in fact the dispute is between the Company and a single employee, M. L. Madan, and that although in some circumstances a dispute between an employer and a single workman can become an industrial dispute, the necessary conditions for this do not exist in the present case. In particular it is argued that the mere fact that a Union, which is not a Union confined to the workmen of this particular employer, has taken up M. L. Madan's case does not make the dispute an industrial dispute within the meaning of the Act. It is further contended that although a number of employees of the Hindustan Times Company are members of this Union, there is

(1) 1949 F.C. 111

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nothing whatever to show that any of them are taking the side of M. L. Madan in this dispute and, therefore, there is no dispute between the Company and its editorial workmen.

I find, however, that even in one of the cases relied on on behalf of the Company there is some support for the view that circumstances may exist as in the present case which make a dispute between an employer and an individual employee an industrial dispute. This is the case *Sri Rama Vilas Service Ltd.*, v. *State of Madras* (1), in which Rajagopalan J. has cited with approval the dictum of Viswanatha Sastri J. in an earlier case as follows—

> "If, however, the dismissal of an employee is the result of victimisation, if the employees in service or a substantial section of such employees threaten to strike work, or having struck work refuse to resume work, unless the person dismissed is reinstated, in other words, if the remaining workmen or a substantial body of them or a union of workmen takes up the cause of the victimised employee and demands his reinstatement, there is an industrial dispute."

It does not detract from the strength of this observation that Rajagopalan, J. found on the facts of that particular case that there was not an industrial dispute, since apparently the Union which had taken up the cause of the dismissed workman among the employees is numbered only 40 out of several hundred employees of the Company concerned. In the present case it may be mentioned that according to the allegations of the Union in this case the Hindustan Times was employing 78 working Journalists of whom 73 are

(1) A.I.R. 1956 Mad. 115

members of the Delhi Union of Journalists, and out of a staff of 50 working Journalists on the Hindustan Times (English Edition) 48 are members of the Union.

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It is clear that when the case of the workman who is a party to the dispute, and the Union to which he belongs, is that the ostensible cause of his dismissal is only a pretext and that the real cause of his dismissal arises from his activities as an office-bearer or a prominent member of the Union, the dispute vitally affects every member of the Union, and since more than ninety per cent of the journalists employed by the Company in this case are members of the Union, there appear to be substantial grounds for holding that there exists a dispute between the Company and its editorial workmen. The learned counsel for the Company has argued that there is nothing to show that the members of the Union who are employed by the Company are in any way supporting M. L. Madan in this dispute, or that there has been any threat of any action by them if he is not reinstated, such as is referred to in the judgment cited above. It seems clear, however, from the circumstances of this case that the occasion has not yet arisen for any threat of striking by the editorial staff of The Hindustan Times, simply on account of the fact that the Union lost no time at all in placing the dispute in the hands of the Conciliation Officer appointed under the Industrial Disputes Act. It seems to me quite obvious that as long as the matter was before the Conciliation Officer and later, as it is now, the subject of a reference to an Industrial Tribunal, any threat of action on the part of the fellow members of the Union employed by The Hindustan Times Company would have been premature and altogether un-justified. I, therefore, do not consider

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that the absence of any threat of striking or taking other action by the fellow employees of M. L. Madan does not prevent the dispute for being an industrial dispute between the Company and its workmen. I cannot for a moment accept the contention of the learned counsel for the Company that the Union has to prove that those of its members who are employed by the Company are supporting M. L. Madan, by proving that they have passed a resolution in his favour or some such means. In my opinion there must be a presumption that when the Union takes action it is as a representative of, and with the support of its members, and that it is for the Company to prove that the facts are otherwise and that the members of the Union are not behind it in its action.

It was contended that the terms of reference themselves show that there is only a dispute between the Company and M. L. Madan since the issue referred to the Industrial Tribunal is simply whether the termination of service of Shri M. L. Madan, Sub-Editor is wrongful and to what relief he is entitled. It seems obvious to me, however, that this issue is to be read in the light of the report of the officer on whose recommendation the dispute was referred to the Tribunal, from which it is quite clear that the real issue, however it may have been phrased in the order of reference, is whether M. L. Madan was dismissed by the Company on the merits of the case or whether he was being victimised for his trade Union activities. In the circumstances I am of the opinion that the present dispute does amount to a dispute between the Company and its editorial workmen and that therefore the reference to the Tribunal is quite valid and proper. I accordingly dismiss the petition with costs. Counsel's fee Rs. 50 for each respondent.