

CIVIL WRIT

Before Gosain and Grover, JJ.

THE MODERN TEXTILE MILLS (PRIVATE), LTD.,—
Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 337 of 1956.

Industrial Disputes Act (XIV of 1947)—Sections 10 and 33A—Reference made to the Industrial Tribunal—Complaint under section 33A during ~~the~~ pendency of the reference—Whether ~~is~~ “industrial dispute” capable of reference under section 10 of the Act.

1958

April, 14th

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Held, that when the employers contravene the provisions of section 33 of the Industrial Disputes Act during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention has got the right to make a complaint in writing to *that* Tribunal and that complaint is to be adjudicated upon as if it were a dispute

referred to or pending before the Tribunal. The section does not, however, turn the dispute actually into an industrial dispute. The Tribunal is required to adjudicate upon the complaint as if it were a dispute referred to it or pending before, it, but the fiction of law involved in this section cannot be taken further than the limits prescribed in the section itself and cannot turn the complaint into an industrial dispute capable of being referred under section 10 of the Act. Only those disputes which are actually covered by the definition of the words "industrial dispute" as given in section 2(k) can be referred by the Government to the Tribunal under section 10 of the Act, and if any particular dispute does not fall within the ambit of the definition of the "industrial dispute", it cannot be the subject of a reference by the Government.

Case referred by Hon'ble Mr. Justice Bishan Narain on 18th April, 1957, to a larger Bench for decision of the legal points involved in the case and later on decided by Hon'ble Mr. Justice Gosain and Hon'ble Mr. Justice Grover on 11th April, 1958.

Petition under Articles 226 and 227 of Constitution of India, praying that a writ in the nature of certiorari or mandamus be issued restraining respondent No. 2 from proceeding with the complaints under section 33A of the Industrial Disputes Act, 1947, filed by respondents Nos. 3 to 20 and directing respondent No. 1 to withdraw the notification, dated the 5th July, 1956.

BHAGIRATH DAS, for Petitioner.

S. M. SIKRI, Advocate-General and Anand Swaroop, for respondents.

ORDER

The judgment of the Court was delivered by—

Gosain, J.

GOSAIN, J.—By means of Notification No. 6667-SLP-54/34846, dated the 10th December, 1954, industrial dispute existing between the textile mills and factories and other allied textile factories including embroidery, lace-making, printing and finishing situated in the district of Amritsar including Chheharta on the one hand and the workers of the textile industry on the other were referred under section 10 of the Industrial Disputes

Act to the Second Industrial Tribunal, Punjab, Amritsar. The dispute related to five items which were specified in the aforesaid notification. On the 18th of March, 1955, one of the items of dispute was withdrawn by means of a notification of the aforesaid date and was referred separately to the same Tribunal by means of another notification of the same date. While the disputes were pending before the aforesaid Tribunal, the Modern Textile Mills, Verka, the Kailash Textile Mills, Amritsar, Messrs Ram Lal-Gura Mal Textile Mills, Chheharta and the Indian Woollen Textile Mills, Chheharta took some action with regard to the employees in contravention of section 33 of the Act and the workers union filed complaints to the Tribunal under section 33A of the Act. By means of two notifications No. 1788-C-LP-56/19345 and No. 1788-C-LP-56/19347, issued on the 14th of May, 1956, and appearing in the Punjab Government Gazette, dated the 15th of May, 1956, the Punjab Government amended the previous three notifications dated the 10th of December, 1954, and 18th of March, 1955, so as to exclude the reference for adjudication of the matters in dispute concerning all textile mills and factories and other allied textile factories including embroidery, lace-making, printing and finishing, situated in the district of Amritsar including Chheharta except relating to the matters in dispute concerning certain factories specified in the notifications. As a result of the aforesaid modification the disputes with regard to the Indian Woollen Textile Mills, Modern Textile Mills, Kailash Textile Mills and Messrs Ram Lal-Gura Mal Textile Mills were excluded from the reference. The term of the Second Industrial Tribunal, Punjab, later came to an end with the result that the Punjab Government, by its notification, dated the 28th of June 1956, reconstituted the Second Industrial Tribunal, Punjab, Amritsar, and

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on the 5th of July, 1956, issued a notification No. 4715-C-LP-56/948, which provided as under—

“Under section 10(1)(c) of the Industrial Disputes Act, 1947, the Governor of Punjab is pleased to direct that the Tribunal now constituted under Notification No. 4715-C-LP-56/653, dated the 28th June, 1956, shall hear and dispose of all the references including complaints under section 33-A of the said Act made to the previous Tribunal constituted under Notification No. 7444-S/5096-C-LP-55/19038, dated the 23rd July, 1955, and which have remained undisposed of on the 30th June, 1956.”

The obvious effect of this notification was that the complaints which were originally made under section 33A of the Act were referred by the Punjab Government to the Industrial Tribunal as if they were “industrial disputes” capable of being referred under section 10 of the Act. The mills in respect of which the complaints had been made submitted to the Tribunal that the complaints could not be treated as industrial disputes and the Punjab Government had no jurisdiction to refer them to the Tribunal under section 10 of the Act. The Tribunal repelled the said objection and found that the complaints had been properly referred as disputes and that the Tribunal had the jurisdiction to decide the same. Five petitions have been made to this Court under Article 226 of the Constitution of India and they are as under:—

- (1) By the Modern Textile Mills-Civil Writ No. 337 of 1956.

- (2) By Messrs Ram Lal-Gura Mal Textile Mills, Chheharata-Civil Writ No. 388 of 1956.
- (3) By the Kailash Textile Mills-Civil Writ No. 353 of 1956.
- (4) Two petitions by the Indian Woollen Textile Mills, Civil Writs Nos. 503 and 504 of 1956.

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In all these petitions same point arises for decision, namely, whether a complaint under section 33A of the Act can be treated as "industrial dispute" for the purposes of a reference under section 10 of the Act. This judgment will dispose of all the five petitions.

"Industrial dispute" is defined in section 2(k) of the Act as under :—

" 'Industrial dispute' means any dispute or difference between employers and employers, 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."

It has been held that an individual dispute of one or more workers with the employers cannot fall within the definition of "industrial dispute" inasmuch as it remains only an individual dispute. If, however, the trade union or the workers' union or a majority of the workers of the employers take up the cause of individual workers, the dispute automatically becomes an industrial dispute and is then capable of being referred under section 10 of

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the Act as an Industrial Tribunal. In *D. N. Benerji v. P. R. Mukherjee and others* (1), it was observed by their Lordships of the Supreme Court as under:—

“The words ‘industrial dispute’ convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests—such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength and collective bargaining has come to stay, a single employee’s case might develop into an industrial dispute, when as often happens, it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress. Such trouble may arise in a single establishment or a factory, it may well arise also in such a manner as to cover the industry as a whole “in a case where

the grievance, if any, passes from the region of individual complaint into a general complaint on behalf of all the workers in the industry. Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between the particular employer and workman."

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Mr. Bhagirath Das, learned counsel for the petitioners, contends that the complaints at the most amounted only to individual disputes because they concerned individual workers on the one hand and the employers on the other. The matters covered by the complaints had never been taken up by the workers' union or trade union or even a majority of the workers of the employers and the complaints therefore, were nothing more than individual disputes and could not possibly fall within the definition of "industrial disputes". It is, however, contended on behalf of the respondents that section 33-A of the Act specifically lays down that the complaints shall be adjudicated as if they were disputes referred to or pending before the Tribunal, and that the complaints must therefore, be treated as industrial disputes capable of being referred under section 10 of the Act. Section 33-A is in the following terms :—

"33-A. Special provision for adjudication as to whether conditions of service etc., changed during pendency of proceedings—
Where an ~~re~~ employer contravenes the provisions of section 33 during the pendency of proceedings "before a Labour

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Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

Properly interpreted, the section only means that when the employers contravene the provisions of section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention has got the right to make a complaint in writing to that Tribunal and that complaint is to be adjudicated upon as if it were a dispute referred to or pending before the Tribunal. The section does not, however, turn the dispute actually into an industrial dispute. The Tribunal is required to adjudicate upon the complaint as if it were a dispute referred to it or pending before it, but the fiction of law involved in this section cannot be taken further than the limits prescribed in the section itself and cannot turn the complaint into an industrial dispute capable of being referred under section 10 of the Act. Only those disputes which are actually covered by the definition of the words "industrial dispute" as given in section 2(k) can be referred by the Government to the Tribunal under section 10 of the Act, and if any particular dispute does not fall within the ambit of the definition of the "industrial

dispute" it cannot obviously be the subject of a reference by the Government. Complaints are only individual disputes and affect only the employees regarding whom provisions of section 33 have been contravened. There is no doubt that if a complaint is made to the Tribunal before whom the industrial dispute was previously pending and during the pendency of which the employers have acted in contravention of section 33, that particular Tribunal has to adjudicate upon the complaint as if it were a dispute referred to or pending before it. This, however, does not mean that the complaint automatically becomes an industrial dispute capable of being referred by the Government under section 10 of the Act to any Industrial Tribunal. We are, therefore, of the opinion that the references made by the Government in respect of the petitioners in the five cases covered by this judgment are beyond the jurisdiction of the Government and the Tribunal has no power to hear and decide the same.

In the result, we accept all the five petitions and issue a writ in the nature of certiorari quashing the impugned references made to the Tribunal as also the entire proceedings taken or being taken by the Tribunal in pursuance of the said references. The respondents will pay the petitioners' costs. Counsel's fee Rs. 100 in each case.

K. S. K.

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