CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE GONDARA TRANSPORT COMPANY (PRIVATE), LIMITED,—*Petitioner*

versus

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

Civil Writ No. 351 of 1962

1965

November, 24th

Industrial Disputes Act (XIV of 1947)—S. 10—Decision by appropriate Government as to the existence or non-existence of an industrial dispute—Whether final and quasi-judicial—'At any time'—Meaning of —Dispute referred at the instance of the Union—Finding by Tribunal that espousal by Union meaningless—Reference—Whether can still be sustained—Dismissed workmen and affected workmen—Whether can be taken into account while determining the substantial number of workmen supporting the dispute—Support to industrial dispute by one-twelfth of the workmen of the employer's establishment—Whether substantial.

Held, that once the appropriate Government has exercised its powers under section 10(1) of the Industrial Disputes Act, 1947 and made a reference of any industrial dispute it becomes *functus officio* and has no jurisdiction to subsequently amend, cancel or supersede the reference. Similarly where the appropriate Government after holding preliminary inquiry decides that no industrial dispute exists in respect of certain demands and communicates that decision to the parties concerned, it becomes *functus officio qua* those demands. There is no provision in the Act empowering the appropriate Government to review its earlier decision based on any such inquiry and to reverse the same without taking the parties affected by the reversal into confidence in any manner. If no finality were to attach to decisions of the Government and if it were left open to the appropriate Government to go to and fro on its own orders without any fresh material being brought before it, the same would certainly be inconsistent with the rule of law enshrined in Article 14 of the Constitution.

Held, that in deciding whether an industrial dispute exists between the parties or not, the appropriate Government does not exercise any judicial function. It is not adjudicating on any *res* or *lis*. It is only concerned with taking a preliminary step to enable adjudication of an industrial dispute. It is not a quasi-judicial order. The Act does not even provide for an appeal against the Government's order declining to make a reference. It is only in a petition under Article 226 of the Constitution that such an order can be assailed if the appropriate Government declines to make a reference on some extraneous grounds on which it is not entitled to reject the demand for an adjudication. Subject to such writ proceedings, the decision of the Government is final as there is no

provision of law under which it can be re-opened by any authority at any time. Of course, the finding of the Government relating to the situation as it prevailed on a particular date would not bar the State Government from coming to a different finding relating to some other date. Cases may arise where it may be open to the Government to give a different decision if it is found that its earlier order was procured by fraud or is vitiated by some other such thing.

Held, that the words 'at any time' in section 10 of the Industrial Disputes Act do not indicate that there is no bar in the Government making a reference of the dispute which it had previously declined to refer. The words 'at any time' indicate that there is no bar of limitation and that a dispute even if it may be very old can be referred by the appropriate Government for adjudication. It would not be consistent with the objects of the Act if disputes raised by certain employees or by anyone on their behalf are allowed to linger on continuously and indefinitely in a fluid and indecisive state. Considering the scheme, objects and purposes of the relevant provisions of the Act as a whole it appears to be clear that words "at any time" in section 10(1) of the Act refer to a period which commences with the issue of demand notice or with any other legal steps by which the proceedings are initiated for making a reference to a Labour Court or Tribunal and which period terminates with an order of the appropriate Government either making a reference or declining to make it for any valid reason. Once the Government has arrived at and given out its decision one way or the other, section 10(1) of the Act ceases to exist for that particular dispute or demand and with such a decision of the Government the words "at any time" contained in section 10(1) of the Act also cease to operate.

Held, that in order to constitute an industrial dispute within the meaning of the Act, the cause of the affected workmen must either be espoused by the Union of the employer's establishment or by a considerable number of members or appreciable section of that establishment. Employees who have been dismissed and whose cause is not in question cannot be taken into account for constituting an appreciable section of the employer's establishment. They are not members of the employer's establishment at all and cannot be considered as such for the purposes of deciding whether there was any industrial dispute or not. The case of the affected workmen whose cause is sought to be referred may be slightly different.

Held, that where 5 out of 60 employees support the dispute, it cannot be said by any stretch of imagination that an appreciable section or considerable number of the members of the establishment of the employer are supporting the dispute. The number is too insignificant to amount to creating an industrial dispute within the meaning of the Act.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued declaring that the reference dated 1st March, 1962, published in the Government Gazette dated 5th

March, 1962 is invalid, without jurisdiction and nullity in law giving no jurisdiction to the Labour Court to go into the same, and the respondents be called upon to withdraw the said notification publishing the reference in question and to treat the same as nullity and they (respondents) be further restrained from proceeding with the said reference.

H. S. GUJRAL AND SUSHIL MALHOTRA, ADVOCATES, for the petitioner.

D. D. JAIN, for the ADVOCATE-GENERAL, WITH P. R. JAIN, AND VED VYAS, ADVOCATES, for the Respondents.

ORDER

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NARULA, J.—The circumstances in which the following three questions of law have been raised in this case by the Gondara Transport Company (Private) Limited of Faridkot, the petitioner before me (hereinafter referred to as the employer), may first be mentioned in all their relevant details—

(1) Whether it is open to the appropriate Government to make a reference of an alleged dispute under section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), to a Labour Court, if the Government has once declined to make such a reference on the ground that the dispute in question is not an 'industrial dispute' within the meaning of section 2(k) of the Act ?

(2) Whether it is open to a Labour Court to sustain a reference as if it had been made at the instance of the affected workmen, though in fact it was made by the Government at the instance of a Union about which the finding of the Labour Court is that 'espousal by the Union or by its executive committee, even if it was competent to raise the dispute, would not be sufficient espousal in the eye of law and would be meaningless'?

(3) If question No. 2 is answered against the employer whether the number of dismissed workmen who are supporting the claims sought to be referred can be taken into account for purposes of making up a substantial proportion of workmen entitled to raise the industrial dispute ?

The employer is carrying on transport business. According to the finding of the Labour Court, the number of workmen employed by it on the relevant date was sixty. The employees of the petitioner concern have a Labour Union of their own. But admittedly that Union has not come into the picture at any stage of this case. Respondent No. 2, the District Motor Transport Workers' Union (Registered), Kotkapura, District Bhatinda (hereinafter called the District Union), however, served a notice dated November 10, 1959, on the employer making six demands, out of which four were of a rather general nature (e.g., claim for daily allowance for booking clerks and checkers while at certain bus-stands, claim for ten days' casual leave, claim for uniforms, etc.). The remaining two items of the notice of demand related to claim for full salary being paid to Inderjit Singh, conductor, during the period of suspension and for reinstatement of one Mukand Singh, clerk on checking duty. Copy of this demand notice, dated November 10, 1959, had been marked as Exhibit M/2 before the Labour Court.

By notice, dated December 22, 1959, the demand regarding Inderjit Singh contained in the first notice was amended so as to include therein a claim for his reinstatement. Further demands were added in the letter of the District Union, dated January 12, 1960. Copy of this notice appears to have been marked as Exhibit M-2/A before the Labour Court. A third notice of demand, dated April 1, 1960, (marked as Exhibit M/4 in the Labour Court proceedings), was served by the District Union on the employer.

The employer replied to all the abovementioned letters and notices. In his replies, copies of which were endorsed to the Conciliation Officer concerned, the employer had taken an objection to the effect that the District Union could not legally raise an industrial dispute against the employer.

By letter, dated June 9, 1960 (copy Annexure 'B' to the writ petition), the Secretary to the Punjab Government in the Department of Labour informed the District Union disposing of all the three demand notices served by the said Union on the employer till that date—as below:—

> "With reference to your demand notices, dated 10th November, 1959, 12th January, 1960, and 1st

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April 1960, served upon the management cited as subject [Messrs Gondara Transport Company (Private) Limited], I am directed to convey that your Union does not command a substantial number of the workmen among its members and as such it cannot espouse the cause of the workers as it is essential according to present interpretation of law. The demand notices have, therefore, been filed."

On November 17, 1960, the District Union made a fourth demand on the employer by a notice of that date (marked as Exhibit M/8 by the Labour Court), which was also, on an objection by the employer, treated by the Punjab Government as not raising an 'industrial dispute' within the meaning of the Act. This decision of the Punjab Government was communicated to the District Union in Government's letter, dated July 20, 1961 (copy Annexure 'C' to the writ petition), in the following words:—

"I am directed to invite a reference to your demand notice, dated the 17th November, 1960, served on the management of Messrs Gondara Transport Company (Private) Limited, Faridkot, and to inform you that it has been reported by the Labour Officer, Patiala, that out of sixty workmen employed in this concern, only eighteen workmen employed support the demand notice (including thirteen dismissed workers). As a substantial number of workmen do not espouse the cause of the common notice, it cannot be considered as an industrial dispute, and Government do not consider it a fit case for adjudication."

About this time the District Union appears to have sent affidavits of some persons to prove the claim of the Union about its being entitled to espouse the cause of the workers of the employer. On February 17, 1962, the Conciliation Officer, Ludhiana, wrote to the employer a letter, of which copy is Annexure 'D' to the writ petition, informing the employer that he (the Conciliation Officer) had been directed by the Government to verify the genuineness of the affidavits obtained by the District Union in support of its demand notice, dated November 17,

1960. In paragraph 11 of the final written statement of the Punjab State, it has been sworn that the said verification was being made in connection with the demand notice, dated November 17, 1960, only, and was not concerned with any of the previous demands. On February 20, 1962, the Conciliation Officer went to Faridkot and is stated to have checked up that fifty workmen were actually on duty under the employer on November 17, 1960, according to the records of the employer, including those who were either on leave or on rest. The employer objected to the affidavits, which had been filed by certain persons described as 'outsiders' by the employer. These were the persons who had resigned from the service of the employer and were no more 'workers' in the employ of the petitioner. In support of that contention the employer produced authenticated copies of the resignations of four ex-workmen who had filed the disputed affidavits. This verification was still in progress when Punjab Government issued the impugned notification, dated March 1, 1962 (published in the *Government Gazette*, dated March 5, 1962), purporting to make a reference of the following two industrial disputes to the Labour Court, Rohtak:—

(1) Whether termination of services of Sarvshri Manmohan Singh, Jagir Singh and Inderjit Singh is justified and in order ? If not, to what relief they are entitled ?

(2) Whether the retrenchment of Shri Mohinder Singh, Booking Clerk, is justified and in order ? If not, to what relief he is entitled ?

It was in the above circumstances that the employer filed this writ petition on March 17, 1962, to declare the abovementioned reference having been made without jurisdiction and to be a nullity and to restrain the Punjab State, the Labour Court and the District Union from acting on it. The writ petition was admitted by the Motion Bench (Tek Chand and Inder Dev Dua, JJ.) on March 20, 1962.

In paragraph 8 of the written statement of the District Union, dated April 27, 1962, it was stated *inter alia* as follows:—

"The respondent Union in reply to the letter under reference (letter of the Punjab Government,

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dated June 9, 1960, declining to make any reference of the disputes referred to in the demand notices served by the District Union on November 10, 1959, January 12, 1960, and April 1, 1960) made representations to the Labour Department to verify the correct facts about the representative character of the Union espousing the cause of its workmen. After proper enquiry by the Department it was found that there existed an industrial dispute and consequently proper reference was made respecting the demand notices, dated November 10, 1959, January 12, 1960, and April 1, 1960. The adjudication on these demands is pending in the Labour Court, Rohtak,—*vide* the Gazette notification No. 475-VIII-DS-Lab.(1)-62/6020, dated March 5, 1962, regarding these demands."

Further the District Union stated as follows in paragraph 10 of its original written statement:—

> "Respondent No. 2 made representations controverting the facts stated in the letter under reference and consequently further enquiry was directed by the Department to verify the correct state of affairs. The enquiry on this demand notice has been completed and the Union has been able to establish that it commands the support of substantial number of workmen. The case is still pending with the Labour Department."

Finally in para 15(i) the District Union averred as follows:—

> "On a proper enquiry the respondent Union has been found to be commanding a substantial support relevant for the purposes of present reference."

In the meantime the Labour Court at Rohtak took cognisance of the impugned reference. Preliminary objections were raised by the employer, which gave rise to the following two preliminary issues:—

(1) Whether the dispute which forms the subject-matter of the present reference is an industrial

dispute and has been espoused by a substantial section of the respondent's establishment ?

(2) Whether in view of the previous refusal by it to refer this dispute, the Government was not competent to refer it later on ?

By order, dated September 6, 1962 (copy Annexure 'L' to the amended writ petition), Shri Jawala Dass, the presiding officer of the Labour Court at Rohtak, decided the above-quoted two issues against the employer by giving the following findings:—

(1) Of course the final report made by Shri Harbans Raj Singh (Joint Labour Commissioner) has not been produced and a privilege has been claimed in respect thereof by the Labour Secretary, who is also the Head of the Department. Admittedly Shri Harbans Raj Singh had not restarted conciliation proceedings and had made no effort to bring about a settlement between the parties. He had, under the Government instructions, merely looked into the complaints made by the Union regarding the alleged mistakes made by the Conciliation Officer. His final report cannot, therefore, be treated as one under section 12(4) of the Act and neither party has a right to examine it.

(2) It is now well settled that an individual dispute relating to the dismissal of a workman can acquire the character of an industrial dispute only if it is espoused by the Union of that employer's establishment or by a considerable number or an appreciable section of that establishment *vide inter alia C. P. Transport Service, Ltd.* v. *R. G. Patwardhan* (1), *Newspapers Ltd.* v. *Industrial Tribunal, Uttar Pradesh* (2) and *Bombay Union of Journalists* v. *"Hindu", Bombay* (3).

(3) It may be stated at once that in the present case the workmen have not set up or tried to prove

(1) (1957) I L.L.J. 27.
(2) (1957) II L.L.J. 1.
(3) (1961) II L.L.J. 436.

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espousal by the Union, which under their instructions had served the notices of demand or which had represented them and pleaded their cause before the Conciliation Officer and with the Government or even in this Court. They have merely tried to prove espousal by certain members of the respondent's establishment. This Union had amongst its members, workmen of the respondent's establishment and of establishments of other similar employers. In the circumstances espousal by the Union or by its executive committee, even if it was competent to raise the dispute, would not be sufficient espousal in the eye of law and would be meaningless. Probably for this reason the workmen had not made any attempt to prove espousal by the Union or its executive committee as such.

(4) It is now admitted by the management's and workmen's representatives, *vide* their statements, dated today, that at the time the relevant demand notices, Exhibit M/2 to M/4, were issued, the total number of workmen in the respondent's establishment, exclusive of the four workmen concerned, was fifty-two. The same fact is also proved by Exhibit M/17, which has been produced and proved by the management. Similarly it is admitted and proved by Exhibit M/18 that at the time the demand notice Exhibit M/8, dated 17th November, 1960 was served, the total number of the respondent's workmen, including the dismissed workmen whose number by then had risen to thirteen, was sixty. It is now satisfactorily proved that in May, 1960, when the dispute regarding the workmen concerned was raised, as many as twenty-two of the respondent's workmen had by their affidavits espoused the cause of these workmen before the Conciliation Officer. It is not now denied by the management that these deponents were not then in their service, nor is it alleged or proved that they were victims of some fraud. Out of them eighteen workmen have now appeared in Court and fifteen of them

have stated on oath that at the relevant time they were in the respondent's service and had supported the cause of these workmen. It is no doubt true that two of them have very recently withdrawn their support, but obviously that is of no consequence. The others have all along supported and are still supporting the workmen concerned. Also some twenty workmen of the respondent listed in Exhibit WW. 19/4 had before Mr. Mehta, supported the cause of the workmen concerned and twelve of them have now appeared as witnesses on the workmen's behalf and have proved the espousal of the same cause by them. It is not denied that the twenty workmen, who appeared before Mr. Mehta, were not in the respondent's service at the relevant time. So far as the present dispute is concerned, the crucial and relevant time is that when the dispute was raised. At that time twenty-two workmen had by their affidavits espoused the cause of the workmen concerned. As already stated, the total number of the respondent's employees at the relevant time, exclusive of the four workmen concerned, was fifty-two and out of them twenty-two had then espoused the cause and fifteen have even now gone into the witness-box to prove the espousal. In my opinion these numbers are quite substantial and espousal by them is enough to convert the dispute into an industrial dispute, and I decide the issue accordingly in favour of the workmen.

(5) In view of what has been said above, I feel no hesitation in holding that in spite of an earlier refusal to refer a certain dispute, the Government has power to refer that dispute at a later stage. The words 'at any time' that occur in the opening part of section 10 of the Act are meaningful and to my mind conclusively show that the Government can change its mind at any time, though only for the purpose of actually making the reference. It can certainly do so when it discovers a change in circumstances. I accordingly decide this issue against the management.

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By order, dated October 16, 1962, in employer's Civil Miscellaneous Application No. 2779 of 1962, this Court (P.C. Pandit, J.) stayed further proceedings before the Labour Court.

The employer then submitted Civil Miscellaneous Application No. 915 of 1963, dated April 10, 1963, for leave of this Court to amend the writ petition, so as to impugn the aforesaid order of the Labour Court also. By order, dated April 30, 1965, the requisite leave was granted by this Court (Shamsher Bahadur, J.) and the writ petition was allowed to be amended. In pursuance of the said permission granted to the employer, amended writ petition, dated November 20, 1964, was filed, on which final arguments have now been addressed to me. A fresh written statement, dated nil, supported by a purported affidavit of one Shri P. P. Shukla, dated nil, attested on May 4, 1965 (not sworn before anyone), has been filed by the State.

Before I set out to discuss the three questions raised by Mr. H. S. Gujral, the learned counsel for the petitioner, it is necessary to be clear about certain matters on which there is utter confusion in the stand taken by the District Union from time to time and even in the orders of the Labour Court. First such matter is as to which are the demands that have been referred to the Labour Court by the impugned notification of the State Government. As stated above, the position taken by the District Union in para 8 of its written statement, dated April 27, 1962 is that the reference made by the Punjab Government and pending adjudication before the Labour Court is in respect of the demand notices, dated November 10, 1959, January 12, 1960 and April 1, 1960. The terms of the reference do not appear to support this contention. In view of clear and unequivocal stand of the referring authority, i.e., the Punjab State, contained in para 11 of its final written statement to the effect that no reference at all has been made of any demands other than those contained in the notice of the District Union, dated November 17, 1960, I have to decide this case on that basis. This judgment is, therefore, based on the consistent stand taken by the State Government throughout this litigation that the impugned reference relates only to the disputes referred to in the notice of the District Union, dated November 17, 1960, which was marked M-8 by the Labour Court.

The crucial date with respect to which it has, therefore, to be decided whether the individual disputes (relating to the termination of service of Manmohan Singh, Jagir Singh and Inderjit Singh—Subject-matter of the first of reference—and relating to the retrenchment of Mohinder Singh Booking Clerk—second point of reference—had or had not acquired the character of an 'industrial dispute' is November 17, 1960. In other words, it has to be seen whether the claim of the said four workers of the employer (named in the reference) was or was not being espoused on November 17, 1960 by an appreciable section or by considerable number of the members of the establishment of the employer.

The second thing, which must not be left in any doubt, is as to the number of the workmen employed by the petitioner on November 17, 1960 and the number of workmen of the employer, who were espousing the cause of the affected workmen on that date. I am bound by the findings of fact recorded by the Labour Court and the State Government in this behalf. The Labour Court has found that the total number of workmen serving the employer on November 17, 1960 was 60. In Government's letter, dated July 20, 1961 (Annexure 'C' to the writ petition), it has also been clearly stated that the total number of workmen, who supported the cause of the four affected persons was 18, which number included as many as 13 dismissed employees of the petitioner. This appears to have been rightly held by the Government as not amounting to an 'industrial dispute'. The finding of the Labour Court on this point, though somewhat confused, ultimately seems to be the same as that of the State Government contained in its letter, dated July 20, 1961. That finding of the Labour Court has already been quoted verbatim as finding No. 4 in an earlier part of this judgment. The Labour Court has mixed up the dates of the first three demand notices with that of the fourth one. In spite of this, the finding of the Labour Court is clear that on November 17, 1960 the number of dismissed workmen, who were supporting the cause of the affected employees, was 13. As to how many workmen were supporting the demand on November 17, 1960, there is no clear finding as the Labour Court has mixed up the date with that of the subsequent affidavits and at some places also with the date on which those employees appeared in some inquiry. The date on which

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the affidavits were sworn and the date on which the persons were examined are wholly irrelevant. The crucial date is November 17, 1960 and there is no finding by anyone that more than 5 persons including the four affected employees and more than 13 others, who were dismissed employees of the petitioner, were supporting the cause of the affected persons on that day. The Labour Court has said that 18 persons appeared before it in Court and these 18 persons including the 5 workmen, who were espousing the cause from the very beginning included the 4 affected workmen also. The facts which clearly emerge from the above discussion are that on November 17, 1960:—

(1) the total number of workmen employed by the petitioner was 60;

(2) the total number of dismissed workmen, who were supporting the cause of the affected employees was 13; and

(3) the total number of workmen in actual employ of the petitioner excluding the dismissed employees was 5.

The third point which needs clarification before embarking on the legal question involved in the case is as to whether the Union of the workmen of the employer ever espoused the cause of the affected employees or not. It is not disputed before me that there is such a Union. It is also admitted that the said Union has not come forward to espouse the cause of the four workmen named in the order of reference. It is also clear that the District Union has as its members some workmen of the petitioner whose number is not disclosed on the record and that it has also on its rolls members of establishments of various other similar employers. It has been clearly held by the Labour Court that the espousal by respondent No. 2 would not be sufficient in the eye of law to justify the impugned reference. The question then is whether on November 17, 1960 it was the District Union or an appreciable section of the establishment of the employer which was espousing the cause of the four affected workmen. The facts narrated above clearly show that it was the District Union and not any appreciable section of the establishment of the employer which was doing so. Even in its written statement, dated April 27, 1962 the District Union has stated in

paragraphs 10 and 15(1) that the District Union carries the support of a substantial number of the employees of the petitioner and they have never stated that they were merely acting as agents of the affected workmen. It is in the above background that the three questions raised by Mr. Gujral have to be answered in this case.

It is settled law that once the appropriate Government has exercised its powers under section 10 (1) of the Industrial Disputes Act, 1947 and made a reference of any industrial dispute it becomes *functus officio* and has no jurisdiction to subsequently amend, cancel or supersede the reference. In some cases it has even been held that the scope of a pending reference cannot be extended or enlarged by the appropriate Government by an amending notification. Do the same principles apply to a case where Government once declares that an industrial dispute does not exist in respect of certain demands and does the Government become *functus officio* qua those demands after having once recorded such a finding and after communicating the same to the parties concerned ? In the nature of things this question does not appear to admit of an inflexible answer which would be correct for all possible circumstances. In deciding whether an industrial dispute exists between the parties or not, the appropriate Government does not appear to be exercising any judicial function. It is not adjudicating on any *res* or *lis*. It is only concerned with taking a preliminary step to enable adjudication of an industrial dispute. If parties join issue on the matter or Government otherwise goes into the matter and takes evidence or holds an inquiry as to the representative character of the Union purporting to espouse cause of the affected workmen or as to the number of the workmen themselves espousing a cause and then as a result of such an inquiry the Government holds that on a particular day there did or did not exist an industrial dispute within the meaning assigned to that phrase in section 2(k) of the Act, there appears to be no provision of the Act empowering the appropriate Government to review its earlier decision based on any such inquiry and to reverse the same without taking the parties affected by the reversal into confidence in any manner. In the instant case the State Government purports to have referred to the Labour Court only those disputes which formed the subject-matter of the demand notice, dated November 17,

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1960. In rejecting the claim for referring those disputes to the Labour Court the State Government had in its order dated July 20, 1961 (annexure 'C' to the writ petition) clearly given findings to the effect:—

(1) that the employer had 60 workmen on the relevant date ;

(2) that out of them only 5 existing and 13 dismissed employees (18 in all) were supporting the demand; and

(3) that this could not be considered to be an industrial dispute because a substantial number of the workmen of the employer did not espouse the cause of the common notice.

No inquiry held after that day is reported to have yielded any different result so far as the situation on November 17, 1960 is concerned. Admittedly there is no provision in the Act empowering the Government to review its above-said order. If the order of the Government, dated July 20, 1961 was a quasi-judicial one, there could be no dispute of its finality. But, as at present advised it appears to me that it may not be possible to call the said order of the State Government quasi-judicial. The Act does not even provide for an appeal against the Government's order declining to make a reference. It is only in a petition under Article 226 of the Constitution that such an order can be assailed if the appropriate Government declines to make a reference on some extraneous grounds on which it is not entitled to reject the demand for an adjudication. Subject to such writ proceedings, the decision of the Government appears to be final and no provision of law has been pointed out to me under which it can be re-opened by any authority at any time. Of course the finding of the Government relating to the situation as it prevailed on November 17, 1960, would not bar the State Government from coming to a different finding relating to some other date. Cases may arise where it may be open to the Government to give a different decision if it is found that its earlier order was procured by fraud or is vitiated by some other such thing. Though different considerations apply to judicial and quasi-judicial matters on one hand and executive or administrative decisions on the other, I

am not able to find better language than that used by I.D. Dua, *J., in Deep Chand and another* v. *Additional Director, Consolidation of Holdings, etc.* (4), while adverting to the necessity of attaching finality to orders given by Tribunals in exercise of quasi-judicial functions and I quote the same below:—

> "To concede such a wide power of review would, in my opinion, introduce into judicial and quasi-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give a impression of quasi-judicial lawlessness, which I cannot persuade myself to uphold. If Courts do not possess such a wide and sweeping power, it is difficult to accede such a wide power in statutory judicial or quasi-judicial tribunals."

One of the main objects of industrial legislation in the country is to secure industrial peace. If no finalty were to attach to decisions of the Government and if it were left open to the appropriate Government to go to and fro on its own orders without any fresh material being brought before it, the same would certainly be inconsistent with the rule of law enshrined in Article 14 of the Constitution. The Labour Court has held that the use of the words "at any time" in section 10 of the Industrial Disputes Act indicates that there is no bar in the Government making a reference of the dispute which it has previously declined to refer. There is no warrant for such an interpretation being placed on section 10 of the Act. The words "at any time" indicate that there is no bar of limitation and that a dispute even if it may be very old can be referred by the appropriate Government for adjudication. It would not be consistent with the objects of the Act if disputes raised by certain employees or by anyone on their behalf are allowed to linger on continuously and indefinitely in a fluid and indecisive state. In *State of Bihar* v. *D. N. Ganguly and others* (5), it was held that the argument that an appropriate Government can cancel an order of reference after having made the same under section 10(1) of the Act is inconsistent with the policy underlying the provisions of section 12(5) of the Act. Their Lordships of the

(4) I.L.R. (1964) 1 Punj. 665 (F.B.)=1964 P.L.R. 318.
(5) A.I.R. 1958 S.C. 1018.

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Supreme Court held in that case that if the Legislature had intended to confer on the appropriate Government the power to cancel an order made under section 10(1), the Legislature would have made a specific provision in that behalf and would have prescribed appropriate limitations on the exercise of the said power. In the instant case the State Government considered the report of the Conciliation Officer and came to a decision that there was no industrial dispute. On that finding it declined to make a reference and communicated its decision to the parties concerned giving the Government's reasons for coming to that finding. This decision was as final as the one of making a reference would have been. It has also been contended by the learned counsel for the respondents that the impugned decision of the Government being administrative it cannot be questioned by way of a writ petition. But this point has been decided by the Supreme Court in *Newspapers Ltd.* v. *State Industrial Tribunal* (6), wherein it was held in this connnection as follows:—

> "In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an 'industrial dispute' at all and, therefore, the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge."

Considering the scheme, objects and purposes of the relevant provisions of the Act as a whole it appears to be clear that words "at any time" in section 10(1) of the Act refer to a period which commences with the issue of demand notice or with any other legal steps by which the proceedings are initiated for making a reference to a Labour Court or Tribunal and which period terminates with an order of the appropriate Government either making a reference or declining to make it for any valid reason. Once the Government has arrived at and given out its decision one way or the other, section 10(1) of the Act ceases to exist for that particular dispute or demand and with such a decision of the Government the words "at

(6) A.I.R. 1957 S.C. 532.

any time" contained in section 10(1) of the Act also cease to operate. In a Full Bench judgment of this Court in *Bhikan and others* v. *The Punjab State and others* (7), Tek Chand J., while dealing with the phrase "at any time" occurring in section 36 of the East Punjab (Consolidation and Prevention of Fragmentation) Act (50 of 1948) held that the said expression as used in section 36 of the Consolidation Act calls for some limitation in point of time and does not mean that the Settlement Officer can revoke or vary the scheme even after the purpose of consolidating the holdings is finally accomplished under the Act. At a subsequent stage some doubt was expressed about the scope of the said phrase "at any time" by another Bench of this Court. The matter was consequently referred by Shamsher Bahadur J., in C.W. (579 of 1962) *Chahat Khan and others* v. *The State of Punjab and others* (8), to a still larger Bench. The Bench of five Judges (Mehar Singh, R. P. Khosla, Inder Dev Dua, P. C. Pandit and H. R. Khanna, JJ.), then went into the question in minute detail and by a majority judgment, (Khanna J., dissenting) held that the interpretation placed on the phrase by Tek Chand J., in *Bhikan's case* was correct. Mehar Singh J., who wrote the first leading majority judgment in *Chahat Khan's case, held* as follows:—

> "It follows from this that the time during which the words "at any time" have force is the time of the duration of the jurisdiction of the Settlement Officer (Consolidation). Apparently when that officer ceases to have jurisdiction, he ceases to exercise power under section 36, and with that comes in the limitation on the words "at any time" in the section. The start of the consolidation of holdings in a given estate is with a notification under section 14 of the Act, under which section is also given the power to the State Government to appoint a Consolidation Officer with the object of preparing the scheme for the consolidation of holdings. What is to be particularly noted is that such a notification is confined to a particular estate or to a group of estates of which the consolidation is to be done at one and the same time. The appointment of

(7) I.L.R. (1963) 1 Punj. 660=1963 P.L.R. 368.
(8) I.L.R. (1966) 1 Punj. 514 (F.B.).

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the Consolidation Officer is for the purpose of preparing the scheme of consolidation of holdings. With the completion of the consolidation of holdings the notification under section 14 obviously serves out its purpose. The jurisdiction of the Consolidation Officer has exhausted itself with the fulfilment of the purpose of the notification. There is no difficulty so far the notification is for a particular estate or estates for the matter of consolidation of holdings and the appointment of a Consolidation Officer is in pursuance of and in confirmity with that notification to prepare a scheme of consolidation of holdings for that particular estate or estates. When that purpose has been achieved, when the consolidation of holding in the estate is complete, the notification under section 14 has served out its purpose and so has the appointment of a Consolidation Officer. He no longer after that as such has jurisdiction in the estate or the estates and the reason is immediately simple, because the purpose of the notification having been achieved, the Consolidation Officer has no longer anything to do in the estate, not only factual, but even under the provisions of the statute. ..... . The consequence is that the decision in *Bhikan's case* is correct and respondent 3, Settlement Officer (Consolidation) had no jurisdiction to make the impugned order varying or modifying the scheme of consolidation in the village after the consolidation proceedings completed and came to an end on the coming into force of the scheme of consolidation of holdings and the taking of possessions of the lands allotted to the land-holders on or about February 16, 1959. Respondent 3 had no jurisdiction to vary or amend the scheme more than a year after the coming into force of the same. The order of respondent 3 in that respect made on May 25, 1961, Annexure 'C', is quashed. The petitioners succeed in their petition and respondent 1 will bear their costs in this petition."

Dua, J., who concurred with the judgment of Mehar Singh, J., gave additional reasons in support of the same

view. In the course of his judgment the learned Judge held in this connection as follows:—

> "Aim, object and scope of the statute read in its entirety and in the background of our constitutional set-up, must always be kept in view in construing the words requiring interpretation, because indisputably they get colour and content from these factors. The constitutional policy may, in my opinion, appropriately provide a very valuable aid in fixing legitimate boundaries of statutory meaning. To quote from Maxwell on Interpretation of Statutes (Eleventh Edition, pp. 16-17): It is an elementary rule that a thing which is within the letter of a statute will, generally, be construed as not within the statute unless it be also within the real intention of the legislature, and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony with that intention. The use of the expression "at any time" in section 36 of the Act, therefore, cannot be considered to be conclusive on its bald literalness."

To argue after the above-said Full Bench judgment of this Court that the use of the words "at any time" gives power to the State Government to re-open the matter again and again after having finally decided it once appears to be wholly illogical.

I, therefore, hold that the impugned reference of the disputes covered by the demand notice, dated November 17, 1960, to the Labour Court in direct reversal of the earlier order of the Government, dated July 20, 1961, is not authorised by any provision of law and is not valid as the power of the State Government under section 10(1) of the Act in relation to the said dispute and notice of demand had been exhausted after the issue of letter (Annexure 'C'), dated 20th July, 1961.

This takes me to the second point urged by the learned counsel for the petitioner. Mr. Gujral has invited my attention to following parts of the record to show that the matter before the Labour Court was only regarding the district Union being entitled or not to espouse the cause of the affected workmen and that the Labour Court has made out a new case for the other side by deciding that

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though the Union is not authorised to espouse the cause of these workmen an industrial dispute still exists because a sufficient number of other workmen of the employer are supporting the cause:—

(1) A preliminary objection had been taken on behalf of management in its pleadings, dated April 2, 1962, before the Labour Court in the following words:—

(a) The individual dispute of each of the workmen Sarvshri Manmohan Singh, Jagir Singh, Inderjit Singh and Mohinder Singh, is not an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, 1947, as the same had never been taken up and espoused by any representative Union having a substantial number of workmen of the respondent Establishment, as their members and on this ground the State Government had twice declined on 9th June, 1960 and 20th July, 1961, to make a reference, as in their opinion the dispute had not been converted into an Industrial Dispute and the Government did not consider it a fit case for adjudication. The individual dispute of these workmen was never transformed into an industrial one at any stage before the date of reference.

(b) The State Government had also no jurisdiction to make the present reference in view of their earlier decisions, dated 9th June, 1960 and 20th July, 1961, on the old four demand notices, as otherwise it would amount to abuse of its power under section 10 of the Act."

(2) The reply of the District Union, dated 29th April, 1962, in response to the above-said preliminary objection was as under:—

"The dispute is covered by the definition in Industrial Disputes Act. This has been properly espoused. The Union had always the support of the substantial majority of the workmen and a substantial majority of the workmen supported the cause of the workmen concerned. The State Government had

full authority to refer the matter for adjudication. ..... . The statement in this sub-para is only an afterthought. The Union espousing the cause of the workmen is the only representative union. .....".

(3) Annexure 'H' to the writ petition is a letter of the District Union, dated 1st April, 1960, addressed to the employer wherein it is stated that according to the decision of the District Union notice of demand was being given and that it would be the Union which would be free to resort to struggle in a constitutional and democratic way for the achievement of the demands in dispute.

(4) All the other demand notices were similarly served by the District Union as espousing the cause of the workmen and not as their agent."

As against the above contention of Mr. Gujral it appears from the relevant letter of the State Government, dated July 20, 1961 (Annexure 'C' to the writ petition) that the Government declined to make a reference not on the ground that the District Union was not a representative one, but on the ground that the espousal of the cause of the affected workmen was not supported by a substantial number of the other employees of the petitioner. It is on the basis of the above-said letter of the Government that the whole case of the petitioner on the first point—the main point—has been argued. In any event it appears to me to be clear that the employer was not in dark as to this aspect of the matter and did give evidence to rebut not only the fact that the District Union was not entitled to represent cause of the employees, but also the allegation that the espousal of the cause of the four affected workmen was supported by sufficient number of petitioner's employees. It is further apparent that issue No. 1 framed by the Labour Court dealt with the aspect of the matter which has been decided by that Court and was not concerned only with the entitlement of the District Union. In an unreported judgment of the Supreme Court in *Bhagwati Prasad* v. *Chandra Mauli* (C. A. 964-964 of 1964), it has been held (Gajendragadkar, C.J.) as follow:—

"If a party asks for a relief on a clear and specific ground and in the issues or at the trial, no other

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ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new.

But considerations of forms cannot override the legitimate considerations made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular plea was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no oportunity to lead evidence in respect of it that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would be unjust; in doing justice to one party, the Court cannot do injustice to another."

Since I have come to the finding that the employer in this case did know that the Labour Court was trying the issue to which objection is now sought to be taken and that the employer did lead evidence in support of that issue, it would be unjust to set aside the order of the Labour Court on that hypertechnical ground. I, therefore, find no force in the second contention of Mr. Gujral. I find that the Labour Court had the jurisdiction to decide whether there

was an industrial dispute in existence in this case or not *qua* not only the District Union, but also after taking into consideration the number of the workmen of the employer who were supporting espousal of the cause of the affected workmen.

The third question raised by the counsel for the petitioner is fairly simple. In order to constitute an industrial dispute within the meaning of the Act, the cause of the affected workmen must either be espoused by the Union of the employer's establishment or by a considerable number of members or appreciable section of that establishment. Employees who have been dismissed and whose cause is not in question cannot be taken into account for constituting an appreciable section of the employer's establishment. They are not members of the employer's establishment at all and cannot be considered as such for the purposes of deciding whether there was any industrial dispute or not. The case of the affected workmen whose cause is sought to be referred may be slightly different. On the findings of the Labour Court and the Government referred to in an earlier part of this judgment, the espousal by the District Union does not constitute an industrial dispute and it is only five workmen of the petitioner, who are supporting the cause of the affected workmen. This cannot by any stretch of imagination be held to be an appreciable section or considerable number of the members of the establishment of the petitioner which on the relevant date consisted of 60 employees. The error of law in the order of the Labour Court in this respect is, therefore, obvious and the decision of the Labour Court on issue No. 2 cannot be sustained. The error of law in the finding of the Labour Court on that issue is glaringly apparent on the face of the record. On this point the Labour Court has referred to the judgment of the Supreme Court in *Workmen of Rohtak General Transport Company* v. *Rohtak General Transport Company* (9), where espousal by five workmen was held to be enough to create an industrial dispute, but the Labour Court should have appreciated that the question is not only of the number of the workmen, but of the percentage of the total establishment of the employer, which has to be taken into consideration. The finding of the Supreme Court in the said case was that the total strength

(9) (1962) 1 L.L.J. 634.

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of the employees was 22, and 5 out of them constituted about 23 per cent of the total strength of the employees. Here 5 out of 60 constitutes only 1/12th of the total strength and this is too insignificant to amount to creating an industrial dispute within the meaning of the Act.

In view of my finding on the first and the last contentions of Mr. Gujral, this petition succeeds and the impugned reference by the Punjab Government and the impugned order of the Labour Court are hereby set aside and quashed. Parties to bear their own costs in this writ petition.

R.S.

APPELLATE CIVIL

Before S. K. Kapur, J.

BRIJENDER KUMAR,—*Appellant*

versus

LACHHMAN DAS DUGGAL,—*Respondent.*

S.A.O. 199-D of 1962.

1965

December, 10th.

Delhi Rent Control Act (LIX of 1958)—S. 14(1) Proviso clause (h)—Acquisition, construction or allotment of residence—Whether must be after taking the premises on lease—Interpretation of Statutes—Ascertainment of legislative purpose—How to be made.

Held, that the language of the opening part of the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958, read with clause (h) thereof leads to the conclusion that the acquisition, construction or allotment of a residence by a tenant must be after taking the premises, from which eviction is sought, on lease. The object of the Act is to regulate relationship between landlord and tenant and the availability of accommodation. It is in accord with that object to hold that what the legislature intended was to withdraw the veil of protection from a tenant who has acquired another residence after taking the lease of the premises in dispute. If a person has some residential accommodation and then takes a lease, the law seems to presume a justification for such a lease. That is why the words "acquired vacant possession of a residence" seem to have been used. Of course, if a tenant owns a house constructed by him before the disputed premises are taken on lease and the same falls vacant after the date of the lease, it may or rather must be said that the tenant has acquired vacant possession of a residence providing ground for eviction. But surely it looks too far-fetched to say that a tenant who had a premises in his possession and then rents