

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24th March, 2015

Date of Decision: 17th April, 2015

+ W.P.(C) 4468/2014

LORD KRISHNA TEXTILE MILLS/ NATIONAL TEXTILE CORPORATION LTD. Petitioner

Through: Mr.Sanjoy Ghose, Adv.

versus

RAMPAL SINGH Respondent

Through: Ms.K.B. Hina, Adv.

+ W.P.(C) 4469/2014

LORD KRISHNA TEXTILE MILLS/ NATIONAL TEXTILE CORPORATION LTD. Petitioner

Through: Mr. Sanjay Ghose with Mr.
Mohd. Farrukh, Advocates.

versus

KAMRUJAMA Respondent

Through: Ms. K.B. Hina, Advocate.

+ W.P.(C) 4497/2014

LORD KRISHNA TEXTILE MILLS/ NATIONAL TEXTILE CORPORATION LTD. Petitioner

Through: Mr. Sanjay Ghose with Mr.
Mohd. Farrukh, Advocates.

versus

YASHPAL

..... Respondent

Through: Ms. K.B. Hina, Advocate.

+ W.P.(C) 4498/2014

LORD KRISHNA TEXTILE MILLS/ NATIONAL TEXTILE
CORPORATION LTD.

..... Petitioner

Through: Mr. Sanjay Ghose with Mr.
Mohd. Farrukh, Advocates.

versus

GHANSHYAM

.... Respondent

Through: Ms. K.B. Hina, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. By way of these petitions under Articles 226 and 227 of the Constitution of India, the petitioner has assailed the orders dated 27.05.2014, wherein the learned Presiding Officer, Central Government Industrial Tribunal cum Labour Court No.II, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in I.D. No. 94/2012, rejected the application of management for framing additional issues.

2. Since all these petitions involve an identical question of law therefore all of them are being disposed of by this common judgment. In order to have a better understanding of facts of the case, it would be appropriate to refer to facts of one of these cases. Therefore, the facts

are being extracted from W.P.(C) No.4688/2014. The facts of the case as borne out from the petition are that the respondent was engaged initially for a period of two months with the petitioner establishment. The management started running into losses. Despite this the workers union went on a strike for their several illegal demands due to which the petitioner-management imposed a lock out in the said mill on 03.09.1991. The same was lifted vide an agreement dated 24.02.1992 between the workers union and the petitioner-management. As per the said settlement, it was agreed that list of workers would be maintained and if the production activities start in the mill, the management would engage workers from the said list of workers. However, the production activities never started and, therefore, the respondent was never engaged in the mill after 03.01.1991.

3. In accordance with the law and as per the agreement dated 24.02.1992 the management laid off those workers who were in the employment of the mill on 25.02.1992 on certain terms and conditions. Thereafter, the workers' union raised an industrial dispute against the aforementioned layoff and the same culminated into an award dated 29.04.2006 passed by learned Industrial Tribunal, Meerut holding that the workers were not entitled to any relief. The respondent also raised an industrial dispute against his termination w.e.f. 03.01.1991 which was referred for adjudication to the Labour Court, Uttar Pradesh, Saharanpur being Adjudication Case No. 133/00. The learned Labour Court vide its award dated 30.04.2011 held that the workman was not entitled to any relief as his alleged termination of services w.e.f. 03.01.1991 was justified and legal.

4. The petitioner-management introduced Modified Voluntary Retirement Scheme (for short 'MVRS') in pursuance to the Board of Industrial and Financial Reconstruction order. Respondent along with other temporary workers filed their representation before the management of the mill for getting the benefits of MVRS and the said representation was decided by the Chairman-cum-Managing Director of the petitioner/NTC vide order dated 13.05.2005 holding therein that the said temporary workers were not entitled to get the benefits under MVRS.

5. Against the aforesaid order dated 13.05.2005, the respondent workman along with other temporary workers filed a writ petition before the High Court of Allahabad. In the said writ petition, the High Court of Allahabad vide its order dated 11.08.2006 held that on the date of introduction of MVRS i.e. 01.01.2002 the claimant and other workmen were not working with the petitioner and as such the MVRS benefits were not applicable to them. Thereafter, the respondent raised an industrial dispute before the Regional Labour (Central) Commissioner at Dehradun who vide reference order dated 23.02.2012 referred the dispute for adjudication to the Tribunal under the following terms:

“Whether action of the management of Lord Krishna Textile Mills/National Textile Corporation (NTC) in denying MVRS benefits/ Lay off compensation/retrenchment compensation to the workman Shri Rampal Singh, Casual Labour who worked with the management since 16.08.1979

and termination from service w.e.f. 30.06.2002 is valid & justified? What relief the worker is entitled to?”

6. During the course of proceedings before the Tribunal, respondent filed statement of claim. The petitioner-management also filed its written statement followed by the replication/rejoinder of the workman. On 17.04.2013 the Tribunal framed the following issues:-

“(1) Whether awards dated 29.04.2006 and 30.04.2011 passed by Labour Court constituted by the State Government comes in the way of claim presented by the claimant?

(2) As in terms of reference.”

7. The workman filed his affidavit of evidence and the witnesses of the said workman were cross- examined by the management. When the authorized representative of the management was preparing its evidence, it was found on inspection that the issue regarding espousal was not framed by the Tribunal. Consequently, the petitioner-management filed an application under Section 11 of the Industrial Disputes Act (for short ‘ID Act’) for framing additional issues pertaining to the espousal of the dispute, to which respondent workman filed reply. The learned Industrial Adjudicator after hearing the arguments from both the sides passed the impugned order dated 27.05.2014 vide which the application of the petitioner-management for framing of additional issue was dismissed on the ground that since

the management has not filed any writ petition against the reference order, the reference order is final and, therefore, no additional issue can be framed.

8. Learned counsel for the petitioner contended that in case of an “interests dispute” an individual is incompetent to raise an industrial dispute, in the absence of due espousal by a substantial body of affected workmen, usually represented through a trade union. An industrial dispute regarding MVRs benefits/ lay off/ compensation/retrenchment compensation, qualifies as an “interests dispute” and under Section 2(k) of the ID Act espousal of such dispute by any union is a condition precedent for the maintainability of any action. Whether an industrial dispute is validly espoused or not is a jurisdictional issue and a decision on the same would go to the root of its maintainability. A tribunal has vast power under Section 11 of the ID Act to frame such issues as are necessary on the pleadings made available to it by the contesting parties and the framing of an issue does not change the scope of reference.

9. It was further contended by the learned counsel for the petitioner that no prejudice would be caused to respondent in case the issue of espousal is framed by the tribunal. The issue of espousal would have to be decided on the basis of the record and would be decided along with the main dispute. No additional evidence is required for the same hence no delay would be caused if such an issue is framed.

10. It was lastly contended by the learned counsel for the petitioner that the tribunal had failed to appreciate that notwithstanding any reference it was very much within its domain and jurisdiction to frame any additional issue touching upon the jurisdiction of the tribunal and the maintainability of reference. No Writ Petition was required to be filed for this purpose. The respondent has also in his cross-examination admitted that the dispute has not been espoused.

11. *Per Contra* learned counsel for the respondent contended that no purpose would be served by framing the issue as proposed by the petitioner. In fact, the tribunal had already reached the conclusion that the said prayer cannot be entertained as the petitioner had never challenged the said order of reference. The prayer if allowed would delay the proceedings before the tribunal.

12. I have heard the learned counsel for the parties and have also perused the material on record.

13. Industrial disputes tend to reduce economic profits and inflict damages on both employer and employee. It poses problems for rationalizing labour and capital and also creates problem in the production and financial profit of the industry that ultimately affects the economy of the country. Therefore, maintaining industrial peace and harmony is important for a worker as it is for an employer as it postulates the existence of understanding, co-operation and a sense of partnership between the employers and employees. Keeping several

such factors in mind the ID Act was enacted with the object of making provisions for the investigation and settlement of industrial disputes, promoting measures for securing and preserving amity and good relations between employer and employees, preventing illegal strikes and lock-outs, providing relief to workmen during lay-off or after retrenchment, wrongful dismissal or victimization along with providing conciliation, arbitration and adjudication facilities.

14. The term “Industrial Dispute” has been defined in Section 2(k) of the ID Act as follows:

“2. Definitions:- In this Act, unless there is anything repugnant in the subject or context,

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(k) “industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

15. The words 'industrial dispute' convey a meaning to the ordinary mind that a dispute must be such that would affect a large group of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest, such as wages, bonus, allowances, pensions, provident fund, number of working hours per week, holidays and so on. It is a settled law that an industrial dispute under Section 2(k) of the ID Act is raised before the authority concerned on a collective basis because a dispute

not espoused by others of the class to which the aggrieved party belongs is not an industrial dispute. Therefore, a dispute between an employer and a single workman cannot be an industrial dispute unless it is taken up by a number of workmen or trade union.

16. It can be seen from above that an industrial dispute can be raised either for a workman or any person regarding whom the workmen have substantial interest in the employment or non-employment or terms of employment or conditions of labour. The expression, 'any person' in the definition has not been equated with workmen and it has a wider connotation. But 'any person' is also subject to limitation under the process of judicial interpretation. The expression 'any person' must have a direct relation with the workmen about whose employment or non-employment or terms of employment or conditions of labour, the workmen have direct and substantial interest. It means that any person must be an employee of the industry in which the workmen are employees as well. The next point for consideration in this series is that whether an individual dispute can become an industrial dispute under Section 2(k) of the ID Act?

17. Prior to 1965, a workman who claimed relief for himself, or a few workmen, who individually claimed relief for themselves had no remedy under the ID Act unless their cause was espoused by a substantial section of other workmen of the same establishment. There were only two methods by which such disputes could have been espoused, namely:-

- (i) By a collective demand made by a substantial section of workmen; or
- (ii) By espousal of individual causes by a trade union representing a substantial section of the workmen of the industry.

18. In this context, the Hon'ble Supreme Court in '**Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate**', *AIR 1958 SC 353* observed as under:-

"15. We reach the same conclusion by approaching the question from a somewhat different standpoint. Ordinarily, it is only the aggrieved party who can raise a dispute; but an 'industrial dispute' is put a collective basis, because it is now settled that an individual dispute, not espoused by others of the class to which the aggrieved party may belong, is not an industrial dispute within the meaning of S. 2(k). As Issacs, J., observed in the Australian case of *George Hudson Ltd. v. Australian Timber Workers' Union*, 32 CLR 413 at p. 441 (B):

"The very nature of an 'industrial dispute' as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees from the class of employers..... It is a battle by the claimants, not for themselves alone.""

19. Thus before 1965, the court had consistently taken a view that a dispute which is neither a collective demand of a substantial section of workmen nor was an individual's cause espoused by a trade union, such a dispute was an 'individual dispute' and did not attain the character of an 'industrial dispute' so as to give jurisdiction to the appropriate government to make a reference for adjudication. However, it resulted in severe hardship to workmen in cases where the question of discharge, dismissal, retrenchment or termination of services of a workman was in issue. At that time, the workmen had to persuade the union for espousing their cases falling in such categories and the Union in turn, may or may not have taken initiatives to espouse even their genuine causes.

20. To prevent such hardships, Section 2A was inserted in the scheme of the ID Act vide Section 3 of Amendment Act 35 of 1965, which came into effect from 01.12.1965 (herein after referred to as the 1965 amendment). Section 2A of the ID Act reads as under:-

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute-

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the

Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

21. A perusal of this Section shows that the dispute regarding discharge, dismissal, retrenchment or termination of the workman and any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute under Section 2A (1) of the ID Act notwithstanding the fact that no other workman nor any union of workmen is a party to that dispute. Further, as per sub-section 2 of Section 2A of the ID Act, such a workman as aforementioned is empowered to directly approach the labour court or a tribunal for adjudication of the dispute as referred in Section 2A (1). However, in the cases of disputes not falling under

sub-section 1 of the said Section, the position is the same as that before the 1965 amendment. For the disputes not covered under Section 2A (1) of the ID Act, its espousal must still be through a Union or a substantial number of fellow workmen.

22. What is observed from above is that the disputes falling under the categories specified under Section 2A of the ID Act are industrial disputes and all other kinds of disputes unless they are espoused properly through a substantial number of fellow workmen would fall under the category of 'individual disputes' which are not a subject matter of concern under the ID Act. Clearly, individual disputes cannot be adjudicated and decided under the ID Act as they do not fall under the definition of the expression 'industrial disputes' as defined under Section 2(k) thereof.

23. Now, reverting to the facts of the present case, the petitioner had moved an application before the trial court for framing additional issue. It is the case of the petitioner that the workman/respondent has claimed his MVRS benefits and lay off compensation before the Tribunal. As per the petitioner, since his dispute does not fall under the definition of an industrial dispute under the ID Act and the same was not espoused through a Union or a substantial number of workmen, the issue of espousal was primary for determination whether the tribunal had jurisdiction to decide on the same. The tribunal in turn had dismissed the said application by its impugned order dated 27.05.2014 on the ground that the petitioner has not challenged the order of reference hence he was barred from moving

such an application which according to it was a delaying tactic on the part of petitioner.

24. This court is not convinced by the view taken by the trial court. As observed above the tribunal is competent to decide only on the disputes which come under the definition of Section 2(k) and 2A of the ID Act and all other kinds of disputes are outside the realms of the ID Act. An individual dispute, howsoever genuine it may be, is not a subject matter of adjudication under the ID Act which talks of collective action and dispute resolution. Thus, the issue of espousal goes to the root of the matter and is not in a nature of a mere technicality. This court in '**Management of Messers Hotel Samrat vs. Government of NCT & Ors**', (2007) 2 LLJ 950 Del observed as under:-

“14.The Tribunal has jurisdiction to adjudicate only an industrial dispute. The Tribunal came to conclusion that the cause of the workmen was not espoused. Once the Tribunal decided the issue of espousal against the workman, the Tribunal lost its jurisdiction to adjudicate the dispute since no industrial dispute existed. However, the Tribunal considered that it was a mere technicality. I consider that the entire jurisprudence of Industrial Disputes Act, is in respect of resolution of collective dispute of the workmen. It is not a mere technicality. An individual dispute unless covered under section 2A cannot be raised under Industrial Disputes Act.”

25. It is pertinent to state here even at the cost of repetition that a Tribunal/Labour Court would get jurisdiction to decide a dispute only when it is properly espoused under the provisions of the ID Act. In

such a case, any objections to non-espousal or improper espousal cannot be brushed aside lightly by the Tribunal/Labour Court rather, must be heard and decided before hearing the parties on merits. Further, merely because a party to a dispute had not objected to the terms of reference would not be sufficient enough a ground not to entertain objections to proper espousal of a dispute. As I have already observed that the issue of espousal goes to the root of the matter, hence objections, if any to espousal must be decided first before a tribunal goes any further to decide on the merits of the dispute.

26. In the light of the above discussion the petitions are allowed. Impugned orders dated 27.05.2014 passed by the learned Presiding Officer, Central Government Industrial Tribunal cum Labour Court No.II, Karkardooma Courts, Delhi are set aside. The Tribunal is directed to frame the issue on espousal and decide the same after affording opportunity to both the parties to present their case, in accordance with law.

C.M. APPL. No. 8918/2014 in W.P.(C) 4468/2014
C.M. APPL. No.8919/2014 in W.P.(C) 4469/2014
C.M.APPL. No. 8957/2014 in W.P.(C) 4497/2014
C.M. APPL. No.8958/2014 in W.P.(C) 4498/2014

All these applications are dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

APRIL 17th, 2015
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