

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12194 OF 2003

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.2 of 2001 on the file of the 1st respondent-Industrial Tribunal, and to quash the award dated 30.12.2002 by holding it as illegal and arbitrary, and also holding that there is no relationship of employer and employee between the petitioner and the drivers/employees covered under the reference.

2. Heard Sri Saloori Ramesh, learned Counsel for the petitioner-company; Smt. K. Udaya Sri, learned Counsel for the 2nd respondent-Union and the learned Government Pleader for Labour.

3. It is the case of the petitioner that it is a registered company having registered office at Hyderabad and the petitioner-company is engaged in the business of manufacture of sale of tyres and tubes of bicycles. It has established a factory at Bollaram. The 2nd respondent union has no connection with the petitioner-company, and none of the employees of the petitioner-company are the members of the 2nd respondent-union. While so, the 2nd respondent raised a dispute before the conciliation officer in respect of five drivers viz., (1) Ranjan Kumar Tripathi (2) Md. Azeez, (3) M. Kumaraiah,

(4) Ramu and (5) Mehboob Ali, seeking to absorb them as drivers of the petitioner-company with all consequential benefits. The Conciliation Officer issued notice to the petitioner and then, the petitioner participated in the proceedings before the Conciliation Officer and specifically pleaded that the above said five drivers were not employed by the petitioner-company and they were the employees of the Directors and they were engaged as personal drivers of the Directors, and that the personal drivers of the Directors of the petitioner-company would not become the employees of the petitioner-company. The Conciliation Officer submitted the failure report to the Government and the Government vide G.O.Rt.No.2492 dated 15.12.2000 referred the dispute to the Industrial Tribunal, Hyderabad under clause (d) of sub-section (1) of 10 of the Industrial Disputes Act. The Industrial Tribunal vide award dated 30.12.2002 passed orders in favour of the 2nd respondent-Union while observing that the petitioner-company changed the service conditions of the drivers covered by the reference from company's drivers to personal drivers, and it is not justified. Accordingly, the Tribunal answered the reference in favour of the 2nd respondent. Challenging the same, the present writ petition is filed.

4. Learned Counsel for the petitioner-company contends that there is no master and servant relationship between the

petitioner-company and five drivers referred in the dispute and they are the personal drivers of the Directors of the petitioner-company. He further contends that the 2nd respondent-union has nothing to do with the affairs of the petitioner-company and that the workmen of the petitioner-company are represented by two trade unions viz., (i) HARTEX STAFF & WORKERS UNION Regd. No.A2386/93, affiliated to TNTUC and (ii) HARTEX RUBBER EMPLOYEES UNION, Regd.No.239/93, affiliated to B.M.S., and all the employees of the petitioner-company are the members of either of the unions referred supra as there is no other union of the employees of the petitioner-company in existence, and that the 2nd respondent without any locus standi and business with the petitioner-company raised a dispute exposing the cause of five drivers before the Conciliation Officer and that the 2nd respondent is no way connected with the affairs of the petitioner-company. He further contends that the Government ought to have examined this particular aspect and ought not to have referred the dispute to the Tribunal and that the Tribunal without appreciating the fact that the 2nd respondent union is an alien to the petitioner-company, and none of the employees of the petitioner-company are the members of the 2nd respondent, mechanically passed orders in favour of the 2nd respondent. To strengthen the said contention, the learned Counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in **Indian**

Cable Co., Ltd., and Its workmen¹ , wherein the Hon'ble Supreme Court held as follows:

"This question however is not res integra. It has been considered in a number of cases in this Court and decided adversely to the present contention of the respondents. In Central Provinces Transport Services Limited Vs. Raghunath Gopal Patwardhan (1957-I LLJ 27) the point in controversy was whether an individual dispute was an industrial dispute within S.2 (k) of the Act. After stating that three divergent views had been expressed on the question and that the preponderance of judicial opinion was in favour of the view that a dispute between an employer and a single employee could not per se be an industrial dispute but that it might become one if it was taken up by a Union or a number of workmen, this Court observed:

"there is considerable reason behind it. Notwithstanding that the language of S.2 (k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen."

This view was adopted in Newspapers Ltd., v. State Industrial Tribunal, U.P. and others (1957-II LLJ 1) where the point arose directly for decision. Discussing the meaning of the expression "industrial dispute" in the U.P. Industrial Disputes Act which is the same as S.2(k) of the Act, this Court observed that though on the rule of construction laid down in S.13(2) of the General Clauses Act, 1897, the plural would include the singular, in the context of the, legislation, the word "workmen" did not include "a workman", and that a dispute between an employer and a single workman did not fall within the definition of industrial dispute. Both these decisions were followed by this Court in Bombay Union of Journalists and others v. The "Hindu", Bombay and another (1961-II LLJ 436)." and the law was thus stated :-

"Therefore, the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute

¹ 1962(2) LLJ 409

involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make common cause with the individual workman".

Relying upon the above referred judgment, the learned Counsel for the petitioner contends that the Industrial Tribunal ought to have applied the said principle in the present case.

5. The learned Counsel for the petitioner further relied upon the judgment of the Hon'ble Supreme Court rendered in ***Bombay Union of Journalists and others Vs. The 'Hindu', Bombay and another***² wherein the Hon'ble Supreme Court held as under:

"By its constitution the Bombay Union of Journalists is a Union not of employees of one employer, but of all employees in the industry of journalism in Bombay. Support of the cause, by the Union, will not in our judgment convert the individual dispute of one of its members into an industrial dispute.' The dispute between "The Hindu", Bombay, and Salivateeswaran was in respect of alleged wrongful termination of employment; it could acquire the character of an industrial dispute only if it was proved that it was, before it was, referred, supported by the Union of the employees of "The Hindu", Bombay, or by an appreciable number of its employees. In Workmen of Dimakuchi Tea Estate V. The Management of Dimakuchi Tea Estate: 1958 SCR 1156: (AIR 1958 SC 353), this Court held by a majority that the two tests of an industrial dispute as defined by sub-s. (k) of S.2 of the Industrial Disputes Act, 1947, must, therefore be-(1) the dispute must be a real dispute capable of being settled by relief given by one party to the other and (2) the person in respect of whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be), the parties to the dispute have a direct or substantial interest, and this must depend on the facts and circumstances of each case. In that case, certain employees

² AIR 1963 SC 318.

sought to raise a dispute about a person who was not a workman. In the present case members of the Union who were not workmen of the employer against whom the dispute was sought to be raised, seek by supporting the dispute to convert what is prima facie an individual dispute into an industrial dispute. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our, view applies to this class of cases also : persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. The mere support to his cause by the Bombay Union of Journalists cannot therefore assist the claim of Salivateeswaran so as to convert it into an industrial dispute. “

He also relied upon the judgment of the Hon'ble Supreme Court rendered in ***Punjab National Bank Vs. Ghulam Dastagir***³ wherein the Hon'ble Supreme Court held as under:

“It is clear that the direction and control are the telling factors to decide as to whether the driver in the present case is the employee of the Bank. This test does not exclude other factors also, and indeed as Lord Macmillan, in the aforesaid case, rightly stressed the question in each case turns on its own circumstances and decisions in other cases are rather illustrative than determinative. To crystallize criteria conclusively is baffling but broad indications may be available from decisions. The 'beedi cases' turn on the reality of 'independent contractors' standing in between the management and the beedi workers. This Court, in many such cases discovered that there was a common practice of using deceptive devices and the so called independent contractors were really agents or workers of the management posing as independent contractors for the purpose of circumventing the Factories Act and like statute which compel managements to meet certain economic and social obligations towards the workers. We have no doubt that if in this case there was evidence to show any colourable device resorted to by the Bank, our conclusion would have been adverse to the Management. On the other hand, the evidence adduced before

³ (1978)2 SCC 358

the Tribunal oral and documentary, lead only to one conclusion that the Bank made available a certain allowance to facilitate the Area Manager, Shri Sharma privately to engage a driver, Of course, the Jeep which he was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid By Shri Sharma as his employer who draw the same granted to him by way of allowance from the Bank. There is nothing on record to make out a nexus between the Bank and the driver. There is nothing on record to indicate that the control and direction of the driver vested in the Bank. After all, the evidence is clearly to the contrary. In the absence of material to make out that the driver was employed by the Bank, was under its direction and control, was paid his salary by the Bank and otherwise was included in the army of employees in the establishment of the Bank, we cannot assume the crucial point which remains to be proved. We must remember that there is no case of camouflage or circumvention of any statute. It is not unusual for public sector industry or a nationalized banking institution to give allowances to its high-level officers leaving it to them to engage the services of drivers or others for fulfilling the needs for which the allowances are meant. In this view, we are clear that the award fails as it is unsupportable. We, therefore, reverse the award."

6. The learned Counsel for the 2nd respondent contends that the 2nd respondent is a registered trade union and it has got every power to expose the cause of the fellow workmen who were not extended benefit of regular services and whose service conditions were changed in the middle of the career and that the 2nd respondent has every right to expose the cause of the five referred drivers and that there are no merits in this writ petition and therefore, the same is liable to be dismissed.

7. This Court has considered the rival submissions of the parties and perused the cross-examination of the President of

the 2nd respondent Union, which is of paramount importance. The President in his cross-examination stated that he did not remember the date and year of the joining of the claimants herein in the 2nd respondent-Union and he has not filed any proof of the membership of the claimants in the union. In the absence of any evidence to demonstrate that five persons, whose cause was exposed by the 2nd respondent, are the members of the 2nd respondent-union, the 2nd respondent-union cannot expose the cause of five alien workmen, who were not even the members of the 2nd respondent-union. More so, when the petitioner has specifically pleaded that there are two registered unions, which were referred to supra, with the petitioner-company those two unions can expose the cause of five workmen. But the 2nd respondent, who is alien and who has nothing to do with the affairs of the petitioner-company or its union activities cannot expose the cause of the above said five workmen. Therefore, the reference made by the State Government vide G.O.Rt.No.2492, dated 5.12.2000 and the orders passed by the Industrial Tribunal in I.D.No.2 of 2001 dated 30.12.2002 are liable to be set aside.

8. Accordingly, the Writ Petition is allowed setting aside reference made by the State Government vide G.O.Rt.No.2492, dated 5.12.2000 and the award passed by the Industrial Tribunal in I.D.No.2 of 2001 dated 30.12.2002, by following the

law laid down by the Hon'ble Supreme in the cases referred to supra. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Abhinand Kumar Shavili

Dated:31-12-2018
Nn.



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31.12.2018

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