



2024:DHC:2184



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

% **Date of order : 19th March, 2024**

+ **W.P.(C) 3455/2018**

AJAI KUMAR & ORS

..... Petitioners

Through: **Mr.Piyush Sharma and Ms.Sakshi
Raghav, Advocates alongwith
petitioners in-person**

versus

SUMITOMO MITSUI BANKING CORPORATION AND ANR

..... Respondents

Through: **Mr.Jeevesh Nagrath and Mr.Jitesh
Pandey, Advocates for R-1**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India seeking the following reliefs:

- "i) *Quash the award dated 10.02.2017 passed by Ld. CGIT-I Delhi in ID No. 159/2011 (old ID No.8/2006) and remit the case to CGIT-I for further adjudication on merit;
ALTERNATIVELY / OR*
- ii) *Permit petitioners to file a civil case before appropriate forum/court extending the period of limitation and condoning the delay if any.*
- iii) *Pass any other order(s) as deem fit and proper in the interest of justice."*



2024:DHC:2184



2. The petitioners in the present case were employees of the respondent no. 2 ('respondent Bank' hereinafter) in the Delhi branch. In the year, 2005, the respondent Bank closed its branches in Delhi and Mumbai and therefore, the services of the petitioners were discharged under the 'Early Separation Scheme' ('ESS' hereinafter).
3. Upon discrepancy in the benefits provided to the employees in the Delhi and Mumbai branches, the petitioners raised an industrial dispute before the Assistant Labour Commissioner, which was subsequently referred to the Central Government Industrial Tribunal, Delhi ('CGIT' hereinafter) *vide* I.D. no. 159/2011.
4. After conclusion of the proceedings, the learned CGIT passed an award dated 10th February, 2017 ('impugned award' hereinafter) thereby holding that the dispute between the parties is not an industrial dispute since the same is not espoused by a Union as mandated under Section 10 of the Industrial Disputes Act, 1947 ('ID Act' hereinafter).
5. Aggrieved by the aforesaid dismissal, the petitioners have approached this Court by filing the instant petition.
6. Learned counsel appearing on behalf of the petitioners submitted that the learned CGIT failed to answer the issue on merits, rather simply dismissed the referral on the ground of non-maintainability and therefore, the same is liable to be set aside.
7. It is submitted that the learned CGIT erroneously applied the principle laid down by this Court in the case of ***Lord Krishna Textile Mills v. Rampal***



*Singh*¹ and misinterpreted the ratio of the said case, thereby, leading to the dismissal of the dispute filed by the petitioners herein.

8. It is submitted that the impugned award was adjudicated without touching upon the merits of the case and the learned CGIT merely decided upon the issue of maintainability which is a violation of the principles of natural justice.

9. It is submitted that the learned CGIT failed to give further opportunity to the petitioners to seek an alternate remedy as per the law as provided under Section 14 of the Limitation Act, 1963.

10. It is also submitted that respondent Bank has again opened their branches in India in the year 2009 and is not recruiting the petitioners back in service, therefore, the said act amounts to retrenchment which is impermissible in law.

11. In light of the foregoing submission, the learned counsel for the petitioners submitted that the present petition be allowed and reliefs be granted, as prayed.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent Bank vehemently opposed the present petition submitting to the effect that the dispute between the parties does not fall within the ambit of industrial dispute as the same is not espoused through a Union or a substantial number of fellow workmen.

¹2015 SCC OnLine Del 14532



13. It is submitted that the learned CGIT rightly held the dispute to be not under the ambit of Section 2(k) of the ID Act as the petitioners failed to produce any evidence to suggest that the said issue was taken up by the Union of the workmen.

14. It is submitted that the statements of the witnesses were completely silent regarding the issue of espousal of the case through their official Union, therefore, leading to dismissal of the dispute.

15. It is submitted that the statement of claim as alleged to be filed on behalf of the General Secretary of the Union is not proven by the petitioners, therefore, the claim of espousal is false and vexatious.

16. It is also submitted that the learned CGIT loses the jurisdiction to adjudicate the dispute if it is established that the said dispute is not espoused as per the law, thereby, fulfilling the requisites of a proper espousal.

17. It is further submitted that the question of adjudication of the issue by the learned Tribunal only arises if the jurisdictional fact exists, therefore, non-existence of the same in the present case led to dismissal of the dispute.

18. In light of the foregoing submissions, the learned counsel for the respondent Bank submitted that the present petition, being devoid of any merit, is liable to be dismissed.

19. Heard the learned counsel for the parties and perused the record.

20. It is the case of the petitioners that the learned CGIT erroneously dismissed the dispute on grounds of its non-espousal by the union, a condition termed to be mandatory for raising the industrial dispute. In support of their claim, the learned counsel for the petitioners has submitted



that the learned CGIT erred in not adjudicating the case on merits and the same is against the settled position of law.

21. In rival submissions, the learned counsel for the respondent Bank submitted that the learned CGIT rightly dismissed the dispute as the conditions for terming a dispute to be an industrial dispute under the ID Act is not fulfilled by the petitioners, i.e., proper espousal.

22. Therefore, the limited question for adjudication before this Court is whether the learned CGIT rightly dismissed the said dispute on grounds of non-espousal of the dispute or not.

23. Before delving into the issue at hand, this Court deems it imperative to discuss the interpretation of the relevant provisions terming a dispute as an industrial dispute under the ID Act.

24. Section 2(k) of the ID Act defines the industrial dispute in the following manner:

“industrial dispute” means any dispute or difference between employers and employers, 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;

25. Upon perusal of the above said definition, it is clear that a dispute shall be termed as an industrial dispute under the ID Act if there is a dispute between the employer and employees which is related to the employment of the said employees in the establishment.

26. The said provision read with Section 10 of the ID Act has been subject to judicial interpretation whereby, the Hon’ble Supreme Court and



this Court have crystallized the legal position time and again and held that a dispute would not amount to an industrial dispute if the same is not espoused by the authorized Union of the workmen.

27. As per the settled position of law, there are two methods for espousal of an industrial dispute, where the first method is raising of a dispute by a substantial number of employees of an establishment, and the second one is the espousal of an individual cause by a Union of the workmen.

28. In ***J.H. Jadhav v. Forbes Gokak Ltd.***² the Hon'ble Supreme Court discussed the interpretation of the abovesaid provision and held as under:

"5. The definition of "industrial dispute" in Section 2(k) of the Act shows that an industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. The definition has been the subject-matter of several decisions of this Court and the law is well settled. The locus classicus is the decision in Workmen v. DharampalPremchand (Saughandhi) [(1965) 3 SCR 394 : AIR 1966 SC 182] where it was held that for the purposes of Section 2(k) it must be shown that: (1) The dispute is connected with the employment or non-employment of a workman. (2) The dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen. The phrase "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of the workmen. (3) The establishment had no union of its own and some of the employees had joined the union of another establishment belonging to the same industry. In such a case it

²(2005) 3 SCC 202



would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in *Dharampal case* [(1965) 3 SCR 394 : AIR 1966 SC 182] is to be found in *Workmen v. Indian Express (P) Ltd.* [(1969) 1 SCC 228 : AIR 1970 SC 737] where an “outside” union was held to be sufficiently representative to espouse the cause.

6. In the present case, it was not questioned that the appellant was a member of the Gokak Mills Staff Union. Nor was any issue raised that the Union was not of the respondent establishment. The objection as noted in the issues framed by the Industrial Tribunal was that the Union was not the majority union. Given the decision in *Dharampal case* [(1965) 3 SCR 394 : AIR 1966 SC 182] the objection was rightly rejected by the Tribunal and wrongly accepted by the High Court.

7. As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available aliunde. It would depend upon the facts of each case. The Tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the Union had espoused the appellant's cause

8. The Division Bench misapplied the principles of judicial review under Article 226 in interfering with the decision. It was not a question of there being no evidence of espousal before the Industrial Tribunal. There was evidence which was considered by the Tribunal in coming to the conclusion that the appellant's cause had been espoused by the Union. The High Court should not have upset this finding without holding that the conclusion was irrational or perverse. The conclusion reached by the High Court is therefore unsustainable."



29. Upon perusal of the same, it is made out that the dispute between the workmen and the employer must be espoused by a Union. The above cited case also clarifies that such Union need not be a Union of majority workmen, and the espousal of the dispute shall normally be considered even if the same is endorsed by an outside Union.

30. Therefore, in light of the same, espousal of a dispute by a Union is important and not the issue of whether the said Union comprises majority workmen or not.

31. Now coming to the issue at hand, the learned CGIT dismissed the dispute raised by the petitioners on the ground that due to non-espousal, the said dispute does not amount to an industrial dispute and therefore, cannot be adjudicated. The relevant parts of the impugned award reads as under:

"2. Background facts giving rise to the present reference, as mentioned in the statement of claim filed by the claimants herein are that Sumitomo Mitsui Banking Corporation had obtained licence from Reserve Bank of India and had opened its branches at New Delhi and Mumbai. Bank also recruited Indian staff for operation of their branches and almost 90% of its employees are Indian employees', i.e. citizens of India. It is in the case of the claimants herein that on 27.09.2004, the bank declared a scheme known as Early Separation Scheme 2004 (in short ESS) and persuaded, coerced and induced the employees of Delhi branch to accept the scheme on dotted lines. Management also threatened the employees that if they do not sign the required application for ESS, their services would be terminated and no claim/payment would be made to the claimants. Management has also assured that the claimants would be given all the facilities at par with Mumbai staff who accepted ESS. Thereafter, for the claimants, a dispute was



raised by the Union on 04.10.2004. Thereafter, all employees for whom the dispute was raised by the Union were forced to sign application for ESS. Thereafter, union raised dispute vide letter dated 14.06.2005 addressed to the Assistant Labour Commissioner, as per Annexure B. In the meantime, more employees approached the union in regard to the illegal action of the management relating to non-payment of pension to them, which is Annexure C.

3. Management has forcibly relieved Mrs. ShalikSabhatwal on 18.12.2004 when she gave birth to a female baby on 15.12.2004 and had proceeded on maternity leave with effect from 14.12.2004. Thus, management acted in a mala fide manner violating provisions of Maternity Benefit Act. Employees were not paid their dues on the date of their relieving and they had to struggle hard to make both ends meet.

4. There are averments that employees posted at Mumbai branch who had accepted ESS were given pension in addition to other benefits as paid to Delhi staff. Employees of Bombay branch were given pension as special case although they had not completed minimum pensionable period of 20 years. They were given pension irrespective of their length of service. Even employees having one year service was given pension ranging from Rs.3000-Rs.4000. The above facts clearly proves that management has nakedly and arbitrarily discriminated between Delhi and Mumbai employees and thus committed unfair labour practice as defined under Section 25-U of the Act.

5. When the union raised industrial dispute before the Assistant Labour Commissioner, New Delhi, management neither appeared nor submitted its reply duly signed by authorized persons. Their reply was submitted by unauthorized person, i.e. one of the partners of M/s Crawford Bayley & Co., which was objected to by the union. The union has also filed rejoinder before the Assistant Labour Commissioner on 15.06.2005, Annexure D. No representative of the management was settling the matter with the claimants. All reasonable efforts of the



Assistant Labour Commissioner was turned down by the litigant agent of the management for mala fide reason. The Assistant Labour Commissioner has also filed failure report to the Ministry of Labour vide letter dated 20.01.2016. Finally matter was referred for adjudication in the manner stated above.

6. Claim was demurred by the management, who has filed detailed reply to the statement of claim by taking various preliminary objections. It is averred that ESS, which is in the nature of VRS was offered by the management to its Delhi branch. Dispute was raised on 31.03.2005 when the respondent management Mitsui Sumitomo Banking Corporation ceased to exist. Later on, industrial dispute was raised on behalf of 5 ex-employees of the above Bank. However, Annexure B attached to the statement of claim mentions 8 names. The said union has wrongly admitted to increasing the number to 13 by adding further 5 names of Annexure C to the statement of claim. It is further clear from the stand of the claimant employment of the workmen in Delhi branch at the relevant time was below 50. It is further alleged that Mumbai branch and Delhi branch had separate set of employees. They were not transferable from one branch to another.

Terms and conditions of services were different in both the branches. There was no provision for pension in Delhi branch while pension was paid in Mumbai branch. Originally, complaint was filed by 5 employees as observed above and before the ALC negotiations were held, which ended in failure.

7. It is alleged on merits that the claimants had voluntarily opted for ESS and their applications were also accepted by the management. They were relieved from duty prior to 21.03.2005 as they have taken compensation under ESS. Now, the claimants cannot resile from the benefits which they have already obtained under ESS. All the employees have given full and final settlement receipts, as such they are estopped from raising an industrial dispute before this Tribunal. So called



industrial dispute was raised after appointed date on which the respondent management had ceased to exist. The present union has no locus standi in the matter as the said union has never operated in Delhi nor espoused the cause of the ex-employees after they ceased to be employees of the respondent management. No union can raise industrial dispute on behalf of an employee after he has ceased to be a workman and on the date of raising the dispute all the ex-employees had ceased to be workmen. There is no question of commission of unfair labour practice as matter is not covered under any of the items listed I the V Schedule. Finally, it was alleged that no relief can be granted to the claimants herein.

8. Rejoinder was also filed on behalf of the claimants herein wherein they have reasserted the stand taken in their statement of claim and denied material averments contained in the statement of defence.

9. Against this factual background, my learned predecessor vide order dated 20.01.2008 framed the following issues;

- (i) Whether there is industrial dispute between the management and the workmen in view of section 2(k) of the ID Act, 1947*
- (ii) Whether the reference is maintainable?*

10. Vide order No.Z-22019/6/2007-IRC-II dated 30.03.2010, the case was transferred to this Tribunal for adjudication.

11. Claimant, in order to prove their case, examined Mrs. Shalika Sabharwal, Shri Krishna Nand Mishra, Shri A Das Nathan as WW1, WW2 and WW3 respectively, and also tendered in evidence several documents. Management No.1, Sumitomo Mitsui Banking Corporation, in order to rebut the case of the claimant, examined Shri Yuichi Nishimura as MW1. No evidence was adduced on behalf of Standard Chartered Bank.



12. I have heard Shri N.K. Gupta, A/R for the claimant, Shri Jitesh Pandey, A/R for Sumitomo Mitsui Banking Corporation and Shri Rajnish Gaur, A/R for Standard Chartered Bank.

13. Both the issues. Issue No.(i) and (ii) are being taken up together for the purpose of discussion as they are legal in nature. However, during the course of arguments, learned A/R for the management submitted that Issue No.2 is required to be adjudicated first for the reason that there is no espousal of the case of the claimants herein through their union. As such, reference is not legally maintainable. In this regard, learned A/R for the management relied heavily upon the ratio of the case in management of Samrat Hotel Vs. Government of NCT of Delhi 2007 (2) LLJ 950 wherein the Hon'ble High Court of Delhi has dealt at length with the requirement of espousal by a union and sponsoring of the case of the workmen by such union to the Labour Commissioner or the Government. Reliance was also placed upon the case of Lord Krishna Textile Mills/National Textile Corporation Ltd. vs. Ram Pal Singh (2015) LLR 77), wherein Hon'ble High Court dealt with the question of individual dispute vi- a-vis Industrial Dispute holding that even an individual dispute not espoused by the union or substantial number of workmen is not an industrial dispute. Even if the party had not objected to the terms of reference, it would be sufficient ground not to entertain the objection of proper espousal. During the course of arguments, it was fairly admitted by the A/Rs for the respective parties that industrial disputes under Section 2(k) of the Act is to be raised before the authority concerned on collective basis because a dispute not espoused by appreciable number of workers of the union to which they belong is not an industrial dispute.

14. In the case in hand, admittedly present case has been filed through All India Bank Staff Association as is clear from the head-note of the statement of claim. Shri J.N. Kapoor is the General Secretary of the above union, who has signed the statement of claim. Admittedly, Shri J.N. Kapoor has not



entered the witness box so as to depose regarding espousal and his status as General Secretary of the union. It was also brought to the notice of this Tribunal that in fact Shri Kapoor had expired by the time the case matured for evidence of the parties, as a result of which statement of Shri Kapoor could not be recorded. Even if it were so, there was no bar or impediment for the claimants who are alleged to be members of the above union to have examined any executive member of the body so as to prove that Shri Kapoor was the General Secretary of the union. Such an official could have also proved the fact that the cause of the claimants herein was taken up for consideration by the union and was discussed in the meeting of the union on a particular date. Statement of the witnesses VWV1 to WW3 is totally silent and there is not even a whisper in the statement of any of the above witnesses regarding espousal of their case through the All India Bank Staff Association. Normally copy of the resolution/espousal certificate is filed alongwith the statement of claim so as to prove that the case was espoused through the union to which the workmen belong.

15. I have carefully gone through ratio of the law in Management of Hotel Samrat case (supra) wherein similar objection was taken by the management in reference made under Section 10 of the Act regarding maintainability of the reference. Hon'ble High Court has upheld the objection as under:

'In the instant case, there is no evidence on record of espousal of the dispute of the petitioner. There was no evidence that either the aggrieved workman had approached the union and asked the union to take up his cause or that union, at any point of time, or any appreciable number of employees, had taken up the cause of the workman with the management. If the union had passed a resolution or appreciable number of workmen had approached the union and raised the demand in respect of regularization of the workmen, it could be said that there



was an espousal of the cause of the workman. Espousal can be expressed in many ways. The secretary of the union, who appeared as a witness has not uttered a single word that the union or any appreciable number of workmen had espoused the cause of the workmen. He simply stated that he had met the management (in his individual capacity). Under these circumstances, it could not be held that an industrial dispute existed between the employer and the workmen to enable the appropriate Government to make an order under Section 10 of the Industrial Disputes Act for referring it for adjudication to the Labour Court.'

16. *There are observations in the above judgement to the effect that the Tribunal has jurisdiction to adjudicate only an industrial dispute which is duly sponsored or espoused through their Union of the workman. Once the Tribunal came to the conclusion that case of the workman was not espoused, the Tribunal loses its jurisdiction to adjudicate the dispute since no industrial dispute exists.*

17. *In the above case, High Court has also dealt with the meaning of the expression 'espousal of the cause' as well as necessity for the same. It was held that espousal means that the dispute of individual workman is adopted by the union as its own dispute or large number of workmen give support to the cause of such dispute; Use of the expression 'union' merely indicates the union to which the employee belongs, even though it may be union of minority of workmen. Further, Section 10 of the Act authorizes the appropriate Government to refer to a Tribunal or a Labour Court only an industrial dispute which is duly espoused or sponsored by the union. Thus, there is considerable merit in the contention of the management that there is no espousal of the case as required under the law.*

18. *Yet again, in Lord Krishna Textile Mills case(supra) Hon'ble High Court even went to the extent of observing that the issue of espousal goes to the root of the matter and an industrial Tribunal or Labour Court is required to adjudicate it*



first before giving findings on merits of the case. Thus, a dispute would become an industrial dispute only where there are sufficient workmen involved when it is espoused through the union or substantial number of fellow workmen irrespective of the fact whether the union is recognized or not. In the case in hand, there is no evidence on record to suggest that case of the workmen herein was ever taken up for discussion by the union, i.e All India Bank Staff Association, nor there is even a whisper in the statement of any of the witness examined on behalf of the claimant. Therefore, in the absence of any evidence, oral or documentary, on record it is held that there was no espousal of the case of the workman regarding the present dispute through its union, All India Bank Staff Association.

19. Be it clarified here that fate of the present case has been decided purely from legal angle qua maintainability of the case for want of espousal through the union of the claimants and there is no adjudication of the case on merits regarding the question claimants herein are entitled for pension and other benefits like their counterparts who are employed in Mumbai branch. The Tribunal is not required to touch merits as held in Load Krishna Mills case (supra) when the reference has been held to be not maintainable.

20. As a sequel to my above discussion made herein, it is held that in the absence of evidence, oral or documentary, regarding espousal of the cause of the claimants through their union, the same is held to be illegal and not maintainable. An award is, accordingly, passed. Let this award be sent to the appropriate government, as required under Section 17 of the Industrial Disputes Act. 1947, for publication."

32. Upon perusal of the above cited paragraphs, it is made out that the learned CGIT emphasized the necessity of the dispute being sponsored or espoused through a Union of the workmen where it was noted that the Union



plays a crucial role in adopting the dispute of individual workmen as its own or garnering support from a large number of workmen for the cause.

33. While adjudicating the issue of espousal, the learned CGIT referred to various judgments to define 'espousal', indicating that it entails the Union adopting the dispute of an individual workman as its own or gaining substantial support from fellow workmen for the said cause.

34. Furthermore, the learned CGIT also clarified that the decision was made purely from a legal standpoint regarding the maintainability of the case due to the lack of espousal through a Union and there was no adjudication on the merits of the case concerning the entitlement of the claimants to pension and other benefits compared to their counterparts in the Mumbai branch.

35. In this backdrop, the only question for examination before this Court is whether the learned Tribunal rightly termed the dispute to be not an industrial one since the same was not espoused as per the law and therefore, precluded itself from adjudicating upon the dispute on its merits.

36. In *Management of Hotel Samrat v. State (NCT of Delhi)*³, this Court expounded the legality of preclusion of the Labour Tribunal after determination of the aspect of non-espousal of the dispute in the following manner:

"9. Section 10 of the Industrial Disputes Act authorizes the appropriate Government to refer to a Tribunal or Labour Court only an industrial dispute. If there is no industrial dispute, the

³2007 SCC OnLine Del 17



same cannot be referred. As per Labour Jurisprudence, the dispute between an individual and the management cannot be an industrial dispute unless it is covered under Section 2A of the I.D. Act. Thus in order to be an industrial dispute, it must satisfy the definition of Section 2(k) of the I.D. Act. In J.H. Jadhav v. Forbes Gokak Ltd., 2005 AIR (SC) 998, Supreme Court observed as under:

“The definition of industrial Dispute” in Section 2(k) of the Act shows that an Industrial Dispute means any dispute or difference between an employer and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the condition of labour, of any person. The definition has been the subject matter of several decisions of this Court and the law is well settled. The locus classicus is the decision in the Workman of DharampalPremchand (Saughandhi) v. DharampalPremchand(Saughandhi), 1965 (3) SCR 394 where it was held that for the purposes of Section 2(K) it must be shown that (1) the dispute is connected with employment or non-employment of a workman; (2) the dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen; the phrase ‘the union’ merely indicates the Union to which the employee belongs even though it may be Union of a minority of the workmen; (3) the establishment had no union on its own and some of the employees had joined the Union of another establishment belonging to the same industry. In such a case it would be open to that Union to take up the cause of the workmen if it is sufficiently representative of those workmen, dispute the fact that such Union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in Dharam Pal's case is to be found in the Workmen of



Indian Express Newspaper (Pvt.) Ltd. v. Management of Indian Express Newspaper Private Ltd., AIR 1970 SC 737 where an 'outside' union was held to be sufficiently representative to espouse the cause."

10. Thus, in order to give jurisdiction to the appropriate Government to refer the dispute and to the Tribunal/Labour Court to adjudicate the dispute, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by a union of the workmen.

11. The Tribunal had considered the evidence led before it and came to conclusion that there was no espousal of the dispute of the workman. The workman has challenged this decision of the Labour Court on the ground that the Labour Court had not considered the fact that demand notice of regularization of services of the workman was issued by All India TDC Mazdoor Janta Union and the proceedings were initiated before the Conciliation Officer by the same union, which clearly showed that the cause of the workman was properly espoused by the union. The General Secretary of the union had deposed before the Labour Court that he had requested the management number of times to pay house rent to the petitioner at par with other employees and to issue him an appointment letter, but the Labour Court had not considered this evidence and given perverse findings on issue No. 1.

12. The dispute between an individual workman and the employer can be treated as an industrial dispute only where the workmen as a body or a considerable section of them, make common cause with the individual workman and espoused his demand. The question arises how the espousal can be inferred. Espousal means that the dispute of an individual workman is adapted by union as its own dispute or a large number of workmen give support to the cause of an individual workman. In the instant case, the only evidence available on record about espousal of the cause is the statement of the Secretary of the Union made before the Tribunal. In his statement, he stated that



he requested the management to treat workman Hira Singh at par with other employees and grant him regular pay scale and he met the management for this purpose and on his pursuance, the management started deducting provident fund from salary of the workman Hira Singh. There is no evidence apart from this evidence about the espousal of the cause. Does mere lending of name of the union by the union Secretary while raising the conciliation proceedings or for issuing notice amount to 'espousal' of cause? Union is a representative body of the workmen. The cause of any workman can be espoused collectively by the Executive Body of the union by taking a decision in this respect. This decision may not be taken in a formal manner but can be taken in an informal manner but it has to be a collective decision of the executive body of the union. An individual member of the executive body cannot take the character of the entire union and cannot bind the union. Merely because the union Secretary met the management and requested for giving a regular appointment letter to the workman, would not amount to espousal of the cause. In this case, this is the only evidence available on record in respect of espousal. In J.H. Jadhav's case (supra), the Supreme Court observed that the union must formally express itself in the form of a resolution which should be approved by its members. However, the number of supporting members of the union may be relevant depending upon facts of each case. In 1961 II LLJ 436, Bombay Union of Journalists v. Hindu Bombay, the Supreme Court observed that an individual dispute can take the character of an industrial dispute only if it was proved that it was, before it was referred, supported by union of employees. In each case, for ascertaining whether an individual dispute has assumed character of an industrial dispute, the test is whether on the date of reference, the dispute was taken up and supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of employees. In this case, the Supreme



Court observed that notice of the meeting for the purpose of considering request by the members for tenable cause of concerned workmen was not given to the employees of the Hindu Board which were not the members of the union at the relevant time. Hence, by mere passing of a resolution by other members of the union, the case of the appellant that the cause of concern workmen was supported by the other employees of Hindu Board, could not be supported. The Supreme Court observed that unless an individual dispute was taken up by union of employees of the employer or by appreciable number of employees of the union, it remains as an individual dispute and does not become an industrial dispute. In 2001 (89) FLR 458, Prakash v. Superintending Engineer (ELEL), the Karnataka High Court observed that an individual can raise a dispute, only for removal, termination or dismissal. If the workman wants to raise a dispute for his absorption and regularization, that can only be done through the union on behalf of workman or workmen.

13. In the instant case, there is no evidence on record of espousal of the dispute of the petitioner. There was no evidence that either the aggrieved workman had approached the union and asked the union to take up his cause or that union, at any point of time, or any appreciable number of employees, had taken up the cause of the workman with the management. If the union had passed a resolution or appreciable number of workmen had approached the union and raised the demand in respect of regularization of the workmen, it could be said that there was an espousal of the cause of the workman. Espousal can be expressed in many ways. The Secretary of the union, who appeared as a witness has not uttered a single word that the union or any appreciable number of workmen had espoused the cause of the workmen. He simply stated that he had met the management (in his individual capacity). Under these circumstances, it could not be held that an industrial dispute existed between the employer and the workmen to enable the



appropriate Government to make an order under Section 10 of the Industrial Disputes Act for referring it for adjudication to the Labour Court.

14. The award of the Tribunal is per se perverse. 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."

37. In light of the above cited judicial dicta, it is clear that the Tribunal's jurisdiction is contingent upon the existence of an industrial dispute as defined by the ID Act and the jurisdiction of the Tribunal is tied to the presence of an industrial dispute, which necessitates support from a Union or a substantial portion of the workforce.

38. Furthermore, it is also clarified that if the Tribunal determines that there is no espousal of the dispute, it loses jurisdiction to adjudicate the matter, as it can only arbitrate industrial disputes. Therefore, the question of adjudication of the dispute does not arise if the Tribunal holds that the dispute raised by workmen is not an industrial dispute.

39. In the instant case, the learned counsel for the petitioner vehemently argued that the learned CGIT erred in not adjudicating the issue on merits and falsely dismissed the same by terming the dispute not as an industrial



one due to absence of proper espousal, however, the above cited dictum clearly suggests that the learned CGIT rightfully dismissed the dispute on the fact that it does not have jurisdiction to adjudicate the same considering that it was not espoused in accordance with the law prescribed under Section 10 of the ID Act.

40. At last, this Court also deems it appropriate to determine whether the learned CGIT examined the evidence rightly or not. As per the impugned award, the petitioners claimed to have raised the dispute by the Union and provided signatures of a person namely Sh. J.N. Kapoor in his capacity as a General Secretary of the concerned Union, however, during the course of the arguments, the petitioners failed to substantiate the said claim. The said findings of the learned CGIT have been duly supported by the fact that the witnesses of the petitioners remained silent regarding the said aspect, therefore, leading to rejection of their dispute.

41. In light of the foregoing discussion, this Court is of the view that the findings of the learned CGIT are legally tenable, whereby, the learned CGIT rightly appreciated the evidence and held that the failure to prove the espousal by a union would amount to dismissal of the dispute.

42. In any case, the writ jurisdiction conferred to this Court does not allow to re-appreciating the evidence or determine the nature of findings based on the evidence produced before the Tribunal. Hence, the findings of the CGIT regarding lack of evidence to prove the espousal by the union stands correct.



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43. This Court is of the view that the learned CGIT rightly appreciated the evidence available on its record and abided by the settled position of law and therefore, termed the dispute to be not an industrial one. This Court does not find any perversity in the impugned award and hence, the instant petition is liable to be dismissed.

44. In light of the above, the impugned award dated 10th February, 2017, passed in I.D. no. 159/2011, by the learned CGIT, New Delhi is hereby upheld and the present petition, being devoid of any merit, is dismissed.

45. Pending applications, if any, also stands dismissed.

46. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 19, 2024

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