

CASE NO.:
Appeal (civil) 1089 of 2005

PETITIONER:
J.H. Jadhav

RESPONDENT:
M/s. Forbes Gokak Ltd.

DATE OF JUDGMENT: 11/02/2005

BENCH:
Ruma Pal & C.K. Thakker

JUDGMENT:
J U D G M E N T
(Arising out of SLP (c) No.19025 of 2004)
RUMA PAL, J.

Leave granted.

The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the Industrial Tribunal by the State Government. In their written statement before the Tribunal the respondent denied the appellant's claim for promotion on merits. In addition, it was contended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947, as the workman was neither supported by a substantial number of workmen nor by a majority union. The appellant claims that his cause was espoused by the Gokak Mills Staff Union.

Before the Tribunal, apart from examining himself, the General Secretary of the Union was examined as a witness in support of the appellant's claim. The General Secretary affirmed that the appellant was a member of the Union and that his cause has been espoused by the Union.

Documents including letters written by the Union to the Deputy Labour Commissioner, as well as the objection filed by the Union before the Conciliation Officer were adduced in evidence. The Tribunal came to the conclusion that in view of the evidence given by the General Secretary and the documents produced, it was clear that the appellant's cause had been espoused by the Union which was one of the Unions of the respondent employer. On the merits, the Tribunal accepted the appellant's contentions that employees who were junior to him have been promoted as clerks. It noted that no record had been produced by the respondent to show that the Management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The Tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. An award was passed in favour of the appellant and the respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

The award of the Industrial Tribunal was challenged by the respondent by way of a writ petition. A Single Judge

dismissed the writ petition. The respondent being aggrieved filed a writ appeal before the Appellate Court. The Appellate Court construed Section 2(k) of the Industrial Disputes Act 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affects the interest of other workmen. Secondly it was held that an individual dispute should be taken up by a Union which had representative character or by a substantial number of employees before it would be converted into an industrial dispute neither of which according to the Appellate Court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the Union or that the dispute has been espoused by the Union by passing any resolution in that regard.

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 Workmen of M/s. Dharampal Premchand (Saughandhi) Vs. M/s. Dharampal Premchand (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 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 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, 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 Dharam Pal's case is to be found in the Workmen of Indian Express Newspaper (Pvt.) Ltd. Vs. 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.

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 Dharam Pal's case, the objection was rightly rejected by the Tribunal and wrongly accepted by the High Court. 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.

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.

For all these reasons the decision of the High Court cannot stand and must be set aside.

Learned counsel appearing for the respondent then submitted that the matter may be remanded back to the Division Bench of the High Court as the Court had not considered the other arguments raised by the respondent while impugning the award of the Industrial Tribunal. It appears from the impugned decision that the only other ground raised by the respondent in the Writ Appeal was that the grievance of the appellant had been belatedly raised. We have found from the decision of the Industrial Tribunal that no such contention had been raised by the respondent before the Tribunal at all. We are not prepared to allow the respondent to raise the issue before the High Court.

The respondent finally submitted that pursuant to the disciplinary proceedings initiated against the appellant in the meanwhile, the appellant had been dismissed from service and that the order of dismissal was the subject matter of a separate industrial dispute. We are not concerned with the propriety of the order of dismissal except to the extent that the appellant cannot obviously be granted actual promotion today. Nevertheless, he would be entitled to the monetary benefits of promotion pursuant to the award of the Industrial Tribunal which is the subject matter of these proceedings upto the date of his dismissal. Any further relief that the appellant may be entitled to must of necessity abide by the final disposal of the industrial dispute relating to the order of dismissal which is said to be pending.

We therefore allow the appeal and set aside the decision of the High Court. The award of the Industrial Tribunal is confirmed subject to the modification that the promotion granted by the award will be given effect to notionally for the period as indicated by the award up to the date of the appellant's dismissal from service. Reliefs in respect of the period subsequent to the order of dismissal shall be subject to the outcome of the pending industrial dispute relating to the termination of the appellant's services. If the termination is ultimately upheld, the appellant will be entitled only to the reliefs granted by us today. If on the other hand the termination is set aside, the appellant will be entitled to promotion as granted by the award.