CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

OM PARKASH SHARMA,—*Petitioner.*

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 1397 of 1961.

1962

February, 2nd.

Industrial Disputes Act (XIV of 1947)—Section 33(1) and (2)—Proceedings under—Whether terminate when award is made under section 20.

Held, that it is no doubt true that an industrial dispute which is referred to a Tribunal comes to an end when the Tribunal makes its award and that award becomes final. Once the award has become final the Tribunal becomes functus *officio* and has no jurisdiction to deal with any matter arising out of or connected with the reference but that will not put an end to an application under section 33(2) because that application has no connection whatever with the dispute nor does it arise out of that dispute. It is totally an independent proceeding arising under section 33(2). It does not die with the death of the reference or its culmination. A clear distinction is maintained by sub-sections (1) and (2) of section 33 of the Industrial Disputes Act between the disputes arising out of the reference and disputes which have nothing to do with the reference. The pendency of a reference merely puts an embargo on the powers of the management to dismiss or discharge its employees. Therefore, the seeking of approval under section 33(2) for dismissal or discharge of an employee has nothing to do with a reference which is pending otherwise before the Tribunal. Sub-section (2) merely furnishes a cause of action or, in other words, is a statutory requirement enjoined upon the management before it can dismiss an employee when some industrial dispute between its workmen and the management is pending though the dismissal may have nothing to do whatever with the reference or with that industrial dispute.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated the 10th May, 1961, and directing him to dispose of the application under Section 33 on merits.*

ANAND SWAROOP, ADVOCATE, for the Petitioner.

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Respondent.

ORDER

Mahajan, J.

MAHAJAN, J.—This is a petition under articles 226 and 227 of the Constitution by one Om Parkash who claims to be still an employee of the Tribune, Ambala.

A reference under the Industrial Disputes Act was pending between the workman and the management before the Industrial Tribunal, Punjab, that being reference No. 13 of 1960. There was another reference pending. In both of these references awards were made on the 4th October, 1960 and the 25th November, 1960, and the awards became final on the 4th of November, 1960 and the 25th of October, 1960, respectively. During the pendency of these references orders of dismissal of Om Parkash were passed on the 12th of July, 1960. In accordance with the provisions of section 33(2) of the Industrial Disputes Act the management sought approval of this order of dismissal from the Tribunal. The Tribunal refused to give its approval on the 26th of October, 1960. Against this order the management moved this Court by a writ petition, No. 1681 of 1960, which was decided by Grover J., on the 1st of February, 1961. The decision of Grover J. is published in *Trustees of "The Tribune" Ambala Cantt.* v. *Industrial Tribunal, Patiala and another* (1), and the learned Judge allowed the petition and directed the Tribunal to give a fresh decision on the petition

(1) 20 F.J.R. 270

under section 33 of the Industrial Disputes Act and dispose of the same in accordance with law. When the matter went back to the Tribunal it refused to decide the petition on the ground that it had no jurisdiction to entertain the same because both the civil references had come to an end. However, the Tribunal made the following observations in the concluding portion of its order—

> "Similarly when the approval is refused that by itself does not set aside the order of the employer or make it ineffective. Nevertheless the ban is removed, and there is no contravention of section 33 if the employer sticks to his order. In that case also the employee can challenge the validity of the order only by raising an industrial dispute and getting it referred."

It is against the order of the Tribunal refusing to decide the petition under section 33 of the Act that the present petition has ben preferred.

Two contentions have been raised by the learned counsel for the petitioner, namely—

(1) that the Tribunal is in error in holding that it had no jurisdiction to decide the petition; and

(2) that if the Tribunal's view is correct that it had no jurisdiction to decide the petition, it could not make the observations which I have already quoted in the earlier part of this order.

After hearing the learned counsel for the parties I am of the view that there is considerable force in the first contention and in view of my decision on the first contention, it is not necessary to decide the second contention. For this purpose it will be necessary to refer to the provisions of section 33(1) and (2) which are in these terms—

[His Lordship read section 33(1) and (2) and continued:]

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Mahajan, J.

It will be noticed that a clear distinction is maintained between the disputes arising out of the reference and disputes which have nothing to do with the reference. The pendency of a reference merely puts an embargo on the powers of the management to dismiss or discharge its employees. Therefore, the seeking of approval under section 33(2) for dismissal or discharge of an employee has nothing to do with a reference which is pending otherwise before the Tribunal. By reference I mean an industrial dispute which the Tribunal is called upon to decide. Sub-section (2) merely furnishes a cause of action or, in other words, is a statutory requirement enjoined upon the management before it can dismiss an employee when some industrial dispute between its workmen and the management is pending though the dismissal may have nothing to do whatever with the reference or with that industrial dispute. Mr. Bhagirath Dass, learned counsel for the management, drew my attention to section 20 and section 33A for the contention that the application under section 33(2) would come to an end the moment the reference comes to an end in accordance with section 20. I am unable to agree with this contention. It is no doubt true that an industrial dispute which is referred to a Tribunal comes to an end when the Tribunal makes its award and that award becomes final. Once the award has become final the Tribunal becomes functus officio and has no jurisdiction to deal with any matter arising out of or connected with the reference but that will not put an end to an application under section 33(2) because that application has no connection whatever with the dispute nor does it arise out of that dispute. It is totally an independent proceeding arising under section 33(2). It will not die with the death of the reference or its culmination. Therefore, I am of the view that the Tribunal is in error in holding that it has no jurisdiction to decide the petition.

There is another way of looking at the matter. At the time when the order directing the Tribunal

to give a fresh decision on the petition under section 33(2) of the Act was passed by Grover J. both the references had come to an end. It was not, therefore, open to the Tribunal in face of that order to say that it had no jurisdiction. It was bound to carry out the order of this Court passed under article 227 of the Constitution. In this view of the matter this petition is allowed and the case is sent back to the Tribunal with the direction that it should determine the application of the management under section 33(2). There will be no order as to costs.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and D. K. Mahajan, JJ.

KELASH NATH AND OTHERS,—*Appellants.*

versus

MUNICIPAL COMMITTEE, BATALA,—*Respondent.*

Regular Second Appeal No. 504 of 1956.

1962

February, 5th.

Punjab Municipal Act (III of 1911)—Sections 84 and 86—Suit to decide whether certain goods fell under one item or other of the Schedule under which octroi duty was chargeable by the Municipal Committee—Whether maintainable in a Civil Court.

Held, that section 84 of the Punjab Municipal Act provides for an appeal against assessment or levy of any tax. It also makes a provision for reference to the High Court. Section 86 says that no objection can be taken to any valuation or assessment, nor can the liability of any person to be assessed or taxed be questioned except as provided in the Act. This section certainly provides a bar which is confined to matters covered by the Act. When the matter for decision is whether the octroi should be levied under one item or the other of the Octroi Schedule on particular goods and the assessing authority comes to the conclusion that it is leviable under a particular item, e.g., item 122 in the present case, it cannot