

such circumstances the charge can be enforced by means of a separate suit only, must be upheld. Consequently, the order of the Tribunal, which was based on that decision, is confirmed. In view of the nature of the points involved, the parties are left to bear their own costs.

Girdhari Lal
v.
Jessa Ram
Grover, J.

G. D. KHOSLA, C.J.—I agree.

G. D. Khosla,
C. J.

R. S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

KHADI GRAMODYOG BHAWAN WORKERS UNION.—
Petitioner.

versus

E. KRISHNAMURTI AND ANOTHER.—*Respondents.*

Civil Writ No. 74-D of 1960.

Industrial Disputes Act (XIV of 1947)—Section 2(k)—Industrial dispute—Dismissed employee becoming a member of the Union after his dismissal—Espousal of his cause by the Union—Whether can make it an industrial dispute—Compensation awarded for wrongful dismissal by Industrial Tribunal—Whether can be interfered with by High Court.

1961

Nov., 6th

Held, that an individual dispute can be referred to adjudication only if its cause is taken up by the general body of workmen. Its representative character is the gist of an industrial dispute under clause (k) of section 2 of the Industrial Disputes Act, 1947. The membership of the Union which would give it jurisdiction to espouse the cause of an individual workman must be one anterior to the date of the dismissal of the workman and not subsequent to it. There is no nexus between the dispute of a workman and the Union of which he becomes a member subsequent to his dismissal.

Held, that the grant of compensation to a workman for wrongful termination of his services is in the discretion

of the Industrial Tribunal and cannot be interfered with by the High Court in the exercise of its jurisdiction under Article 226 of the Constitution.

Petition under Articles 226 and 227 of the Constitution of India praying that your Lordships may be pleased to call for the records of the above reference from the Industrial Tribunal, Delhi, and to issue writ of certiorari and such other appropriate writ direction and/or orders and

(a) to quash the award dated 19th November, 1959, (published on 31st December, 1959), of the Industrial Tribunal, Delhi.

(b) to decide the cases of Shri Lapoor Chand Jain, and Shri Anayat Ali,

and/or

(c) to pass such other order or orders as your Lordships may deem fit and proper.

HARI SHANKAR, ADVOCATE, for the Petitioner.

DR. ANAND PARKASH, YOGESHWAR DAYAL, MADAN LAL GUPTA, ADVOCATES, for the Respondent.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—The award made by the Industrial Tribunal, Delhi, on 19th of November, 1959, has been challenged by way of these writ proceedings under Articles 226 and 227 of the Constitution of India.

Anayat Ali, Lapoor Chand Jain and Jodh Singh had a dispute with their employer Khadi Gramodyog Bhawan and the matter was referred to the Tribunal for adjudication under sections 10 and 12 of the Industrial Disputes Act, 1947. According to the findings of the Tribunal, the termination of Jodh Singh's services was valid and justified and he was not entitled to any relief. In the case of Anayat Ali and Lapoor Chand Jain, the Tribunal held that their services had been wrongfully terminated. The relief accorded to Anayat

Ali by the Tribunal was that he should be granted compensation equivalent to six months' remuneration which he would have got if his services had not been so terminated. No relief was given by the Tribunal to Lapoor Chand Jain as the dispute *qua* him did not fall within the ambit of an industrial dispute as defined in section 2(k) of the Industrial Disputes Act.

The present petition has been pressed only as regards Anayat Ali and Lapoor Chand Jain. So far as the case of Anayat Ali is concerned he was employed in the tailoring section of the organisation of the second respondent. The services of Anayat Ali were terminated on 1st of December, 1958, while the organisation closed its tailoring activities on 1st of October, 1959. According to the Tribunal, and this finding is not challenged by the learned counsel for the petitioner, Anayat Ali could not be re-employed as the tailoring section of the organisation had ceased to operate. All that has been urged by Mr. Hari Shankar, the learned counsel for the petitioner, is that Anayat Ali should have been granted a compensation not for six months' remuneration but for ten, that is to say, for the duration when the tailoring department continued working and for which period his services had been found to have been in illegal termination. The grant of relief in this respect cannot be said to be an error which is liable to correction in writ proceedings. Whether the Tribunal thought it fit to grant compensation for six months or ten is a matter of discretion and it would be wrong for this Court to interfere on this score even if I were minded to agree with the contention raised by the learned counsel.

As regards Lapoor Chand Jain, the basic facts, on which the decision has been given, are not disputed. His services were terminated on 1st of September, 1958, and he became a member of the Union which has now espoused his cause on 22nd of October, 1958. On a plain construction of section 2(k) of the Industrial Disputes Act, a dispute becomes industrial dispute "which can be referred

Khadi
Gramodyog
Bhawan
Workers
Union

v.

E. Krishna Murti
and another

Shamsher
Bahadur, J.

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E Krishna Murthi
and another

Shamsher
Mahadur, J.

to adjudication under section 10 of the Act only if it relates to a dispute between employers and employees, employers and workmen or between workmen and workmen. Stress has been laid by the learned counsel on the latter portion of this provision which states that the dispute must be connected "with the employment or non-employment or the terms of employment or with the conditions of labour of any person". It is argued that the words "of any person" would include a dispute which is connected with an individual. As has been held by various authorities, an individual dispute can be referred to adjudication only if its cause is taken up by the general body of workmen. Its representative character is the gist of an industrial dispute under clause (k) of section 2 of the Industrial Disputes Act, and indeed, as pointed out by their Lordships of the Supreme Court in *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate* (1), a limitation and a qualification.

The matter specifically raised has been dealt with at least in two authorities one of which has actually been relied upon by the Industrial Tribunal. This was a case decided by Raju, J., in *Padarthy Ratnam and Co., Guntur v. Industrial Tribunal and others* (2). As pointed out by Raju, J., "it is no doubt true that a dispute simpliciter between an employer and a workman might develop into an industrial dispute within the meaning of section 2(k) of the Act if the cause is espoused by a union of which he is a member. The membership of the union which would give it jurisdiction to espouse their cause, must be one anterior to the date of the dismissal and not subsequent to it". As has been mentioned, Lapoor Chand Jain, was dismissed on 1st of September, 1958, and he did not become a member of the union which espoused his cause till the 22nd October, 1958. There is thus no nexus between the dispute of Lapoor Chand Jain and the union of which he became a member subsequent to his dismissal.

(1) A.I.R. 1958 S.C. 353

(2) (1958) 2 L.L.J. 290

The authority of Raju, J., was approved in a Division Bench judgment of the Kerala High Court delivered by Ansari, C.J., and Govinda Menon, J., in *Shamsuddin v. State of Kerala and others* (1). In this case, three workmen had been dismissed in a commercial concern and in a dispute referred to the Tribunal their cause was taken up by a union of which they had become members subsequent to their dismissal. It was held that the reference was invalid as the dispute did not assume the characteristics of "industrial dispute" as defined in section 2(k) of the Industrial Disputes Act. The reasoning adopted in the judgment, which was given by Ansari, C.J., is unimpeachable. He said that "the community of interest has been insisted upon in order to exclude those who have not immediate and direct interest, from subsequent participation in any unconnected disputes, and the object would be defeated, were such interest not to be insisted upon at the initial stages. Otherwise, associations, of which the original parties be not members, would subsequently join on any of the aggrieved party's becoming members and persuading the later associates to take up their cause". I am in respectful agreement with the views propounded by the learned Single Judge of the Andhra High Court and confirmed by a Division Bench of the Kerala High Court in *Shamsuddin's* case. I, therefore, see no force in this petition which fails and is dismissed. In the circumstances of the case, I would leave the parties to bear their own costs.

R. S.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

CHETU RAM,—*Petitioner.*

versus

ASA NAND,—*Respondent.*

Civil Revision No. 502 of 1961.

Jurisdiction—Whether can be conferred by consent of parties—Plea as to want of jurisdiction—Whether entertainable at any stage—Precedent—Decision of a single

(1) (1961) 1 L.L.J. 77.

Khadi
Gramodyog
Bhawan
Workers'
Union

v.

E. Krishna Murti
and another

Shamsher
Bahadur, J.

1961

Nov., 11th