SHAMBU NATH GOYAL

v.

BANK OF BARODA, JULLUNDUR

February 2, 1978

[V. R. KRISHNA IYER AND D. A. DESAI, JJ.]

Industrial Disputes Act 1947—*Sec.* 2(*k*)-*Sec.* 10—*Before an industrial dispute is referred whether a written demand by the workman is essential—Existence of industrial dispute.*

The appellant was a clerk in the Bank of Baroda. A charge sheet was served upon him. After holding departmental enquiry he was dismissed from service. An appeal filed by the workman against the dismissal was dismissed.

Thereafter, the matter was referred to conciliation. On failure of conciliation, the Government referred the dispute to the Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947. The respondent raised a preliminary objection before the Tribunal that as no demand in respect of the appellant was made upon the management there was no industrial dispute in existence and, therefore, the reference made by the Government under section 10 was incompetent. The Tribunal upheld the said preliminary objection on the ground that as no demand was made by the Government either oral or in writing before approaching the conciliation officer there was no dispute in existence on the date of the reference.

Allowing the appeal,

HELD : 1. Section 2(k) of the Act defines industrial dispute which requires that there should be a dispute connected with the employment or non-employment or terms of employment *inter alia* between the employers and workmen. The Act nowhere contemplates that the dispute would come into existence in any particular specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not *sine qua non.* [795 B-C]

Beetham v. *Trinidad Cement Ltd.*, [1960] 1 All E.R. 244 at 249, referred to.

2. The key words in the definition of Industrial dispute are dispute or difference. The term industrial dispute connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section. The power conferred by section 10(1) on the Government to refer the dispute can be exercised not only where the industrial dispute exists but when it is also apprehended. In making a reference under section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. [795 D-E, F-H, 796 A]

Madras State v. *C. P. Sarathy*, AIR 1953 SC 52 and *Sindhu Resettlement Corporation Ltd.* v. *Industrial Tribunal*, [1968] LLJ 834, referred to.

3. The question whether an industrial dispute exists on the date of reference is a question of fact to be determined on the material placed before the Tribunal. [796 D]

4. In the present case the Tribunal completely misdirected itself when it observed that no demand was made by the workman claiming reinstatement after dismissal. When the enquiry was held it is an admitted position that the workman appeared and claimed reinstatement. After his dismissal he

preferred an appeal to the appellate forum and contended that the order of dismissal was wrong and that in any event he should be reinstated in service. When the Union approached the Conciliation Officer, the Management appeared and contested the claim for reinstatement. There is thus unimpeachable evidence that the concerned workman persistently demanded reinstatement.

[796 E-H. 797 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 646 of 1971.

Appeal by Special Leave from the Award dated 25-10-1970 of the Central Industrial Tribunal, Chandigarh in Reference No. 3/C of 1970 published in the Gazette of India, Part II, Section 3, Sub-section (II) dated 28-11-1970.

M. K. Garg for the appellant.

Ex parte against the respondent.

The Judgment of the Court was delivered by

DESAI, J. This appeal by special leave arises out of an award made by Industrial Tribunal, Chandigarh in Reference No. 3/C of 1970 between S. N. Goyal, workman and the management of the Bank of Baroda, by which the industrial dispute raised by the workman complaining about his illegal dismissal from service and seeking reinstatement was rejected holding that in the absence of any demand having been made by the concerned workman on the respondent bank and consequently no industrial dispute having come into existence the Government was not competent to refer the dispute to the Tribunal for adjudication.

S. N. Goyal, workman was a clerk in the Bank of Baroda, B.O. Civil Lines, Jullundur City. A charge-sheet dated 31st July, 1965 was served upon him whereafter an inquiry into charges was held and ultimately the workman was dismissed from service, against which the workman unsuccessfully appealed. The industrial dispute arising out of the dismissal of the workman was espoused by Punjab Bank Workers Union. On the failure recorded by conciliation officer, Government of India made the reference in the following terms :

> "Whether the action of the management of Bank of Baroda in dismissing Shri S. N. Goyal a clerk of Civil Lines Branch, Jullundur of the Bank was justified ? If not, to what relief is he entitled ?"

The Union filed statement of claim. The Bank of Baroda in its written statement raised a preliminary objection that as no demand in respect of Shri S. N. Goyal was made upon the management, there was no industrial dispute in existence and therefore the reference made by the Government under s. 10 of the Industrial Disputes Act was incompetent. There was another preliminary objection with which we are not concerned in this appeal. The first preliminary objection found favour with the Industrial Tribunal which upheld the contention that as no demand either oral or in writing was made by the concerned workman before approaching the Conciliation Officer, there was no dispute in existence on the date of the reference and therefore the reference made by the Government was incompetent.

Section 2(k) defines industrial dispute as under : A

> "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;" B

A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming C into existence of an industrial dispute a written demand is not a *sine qua non,* unless of course in the case of public utility service, because s. 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words. In *Beetham* v. *Trinidad Cement Ltd.*(1). Lord Denning while examining the definition of D expression 'Trade dispute' in s. 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed :

> "by definition a 'trade dispute' exists whenever a 'difference' exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening". E

Thus the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the Undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of F labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tentamount to re-writing the section.

The reference in the case before us was made under s. 10(1) which provides *inter alia* that where the appropriate government is of opinion that any industrial dispute exists or is apprehended it may at any G time by order in writing refer the matter for adjudication as therein mentioned. The power conferred by s. 10(1) on the Government to refer the dispute can be exercised not only where an industrial dispute exists but when it is also apprehended. From the material placed before the Government, Government reaches an administrative decision whether there exists an industrial dispute or an industrial dispute is apprehended and in either event it can exercise its power under s. 10(1). H But in making a reference under s. 10(1) the Government is doing

(1) [1960] 1 All E.R. 244 at 249.

A an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi judicial determination. No doubt it will be open to a party seeking to impugn B the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide C upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because in its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those matters, (vide *Madras State* v. *C. P. Sarthy*(1). The Tribunal, however, referred to the decision of this Court in *Sindhi Resettlement Corporation Ltd.* v. *Industrial Tribunal*(2), in which this Court proceeded to ascertain D whether there was in existence an industrial dispute at the date of reference, but the question whether in case of an apprehended dispute Government can make reference under s. 10(1) was not examined. But that apart the question whether an industrial dispute exists at the date of reference is a question of fact to be determined on the material placed before the Tribunal with the cautions enunciated in *C. P. Sarthy's case* (Supra). In the case before us, it can be shown from the record accepted by the Tribunal itself that there was in existence a dispute E which was legitimately referred by the Government to the Industrial Tribunal for adjudication. Undoubtedly, it is for the Government to be satisfied about existence of the dispute and the Government does appear to be satisfied. However, it would be open to the party impugning the reference that there was no material before the Government, and it would be open to the Tribunal to examine the question, F but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the Government.

In this case the Tribunal completely misdirected itself when it observed that no demand was made by the workman claiming reinstatement after dismissal. When the inquiry was held, it is an admitted G position, that the workman appeared and claimed reinstatement. After his dismissal he preferred an appeal to the Appellate forum and contended that the order of dismissal was wrong, unsupported by evidence and in any event he should be reinstated in service. If that was not a demand for reinstatement addressed to employer what else would it convey. That appeal itself is a representation questioning the decision of the Management dismissing the workmen from service and praying for reinstatement. There is further a fact that when

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(1) A.I.R. 1953 S.C. 53.

(2) [1968] L.L.J. 843.

the Union approached the Conciliation Officer the Management appeared and contested the claim for reinstatement. There is thus unimpeachable evidence that the concerned workman persistently demanded reinstatement. If in this background the Government came to the conclusion that there exists a dispute concerning workman S. N. Goyal and it was an industrial dispute because there was demand for reinstatement and a reference was made such reference could hardly be rejected on the ground that there was no demand and the industrial dispute did not come into existence. Therefore, the Tribunal was in error in rejecting the reference on the ground that the reference was incompetent. Accordingly this appeal is allowed and the Award of the Tribunal is set aside and the matter is remitted to tribunal for disposal according to law. The respondent shall pay costs of the appellant in this Court. As the reference is very old the Tribunal should dispose it of as expeditiously as possible.

A B C

P.H.P. *Appeal allowed.*