A

COX & KINGS (AGENTS) LTD.

v.

THEIR WORKMEN AND ORS.

March 18, 1977

B [V. R. KRISHNA IYER, R. S. SARKARIA AND JASWANT SINGH, JJ.]

Industrial Disputes Act, 1947—S. 2(b) and s. 19(3)—Scope of—Decision given without going into merits of a dispute—If an award—Second reference in such a case—If could be made within a year.

The term 'Award' has been defined by s. 2(b) of the Industrial Disputes Act, 1947 to mean an interim or a final determination of any industrial dispute or of any question relating thereto by a Labour Court. Section 10, which describes the matters that can be referred to a Labour Court etc. for adjudication C provides in sub s.(1) that where an appropriate government is of opinion that any industrial dispute exists or is apprehended it may, at any time, by order in writing...(c) refer the dispute or any matter appearing to be connected with or relevant to the dispute, if it relates to any matter specified in the second schedule, to a Labour Court for adjudication. Under s. 19(3) an award shall remain in operation for a period of one year from the date on which the award becomes enforceable under s. 17A.

D An industrial dispute relating to the dismissal of three workmen of the appellant had been referred to a Labour Court. The Labour Court held that the reference was invalid because, as the workmen had not served demand notice on the management prior to the reference, no industrial dispute could legally come into existence before the reference. After serving a demand notice on the management within a month thereafter the workmen raised an industrial dispute relating to the same matter. The Labour Court rejected the employer's preliminary objection that in view of s. 19, the second reference was not competent in that it was made within one year of the first award, and decided the E case on merits. The Labour Court held that the termination of the services of the workmen was illegal and ordered reinstatement with back wages from the date of termination.

The employer's writ petition under Art. 226 of the Constitution impugning the Labour Court's decision was dismissed by the High Court.

Dismissing the appeal,

F HELD : The Labour Court's determination in the first reference did not possess the attributes essential to bring it within the definition of an award. The mere fact that this order was published by the Government under s. 17(1), did not confer that status on it. [339 D]

1(a) The definition of 'award' under s. 2(b) falls in two parts (i) determination, final or interim, *of any industrial dispute* and (ii) *of any question relating to an industrial dispute.* The basic postulate common to both the parts of the defintion is *the existence of an industrial dispute,* actual or apprehended. G The 'determination' contemplated by the definition is of an industrial dispute or a question relating thereto *on merits.* [338 D]

(b) In the instant cases the order of the Labour Court in the first reference did not determine the question or points specified in government order of reference, nor was it an adjudication on merits of any industrial dispute or a question relating thereto. The only question determined by the Labour Court was about the existence of an industrial dispute which in its opinion was a *sine qua non* for the validity of the reference. Rightly or wrongly it found that this pre- H liminary jurisdictional fact did not exist because no industrial dispute had come into existence in accordance with law and in consequence. the reference was invalid. There was, therefore, no determination of the dispute on merits on the question relating thereto. [339 C-D]

Technological Institute of Textiles v. *Its Workmen and Ors.* [1965] 2 LLJ 149, followed. A

Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd. v. *The Workmen and Anr.* [1968] 1 SCR 581, referred to.

Workmen of Swadeshi Cotton Mills Co. Ltd. v. *Swadeshi Cotton Mills Co. Ltd. Kanpur and Ors.* 42 Indian Factories Journal p. 253, not approved.

(b) Moreover the decision of the Labour Court in the first reference did not impose any continuing obligation on the parties bound by it. The second reference was, therefore, not barred by anything contained in sub s. (3) or other provisions of s. 19. [340 C] B

2. The Labour Court was not justified in awarding compensation to the workmen for wages relating to the period prior to the date on which the demand notice for reinstatement was served on the management. [340 H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 375 of 1976. C

(Appeal by Special Leave from the Judgment and Order dated 7.11.1975 of the High Court at New Delhi in Civil Writ No. 1123 of 1975)

G. B. Pai, O. C. Mathur and *D. N. Mishra,* for the appellant.

M. K. Ramamurthi, S. C. Jain and *Madan Mohan,* for respondent No. 1. D

The Judgment of the Court was delivered by

SARKARIA, J.—Th principal question that arises in this appeal by special leave is : Whether an order of the Labour Court to the effect, that since no demand of the workmen had been served on the employer, no industrial dispute had come into existence in accordance with law, and as such the Reference was invalid and the Court had no jurisdiction to adjudicate the matter referred to it by the Government, is an "award" for the purposes of Section 19 of the Industrial Disputes Act, 1947, (for short, called the Act)? E

Cox & Kings (Agents) Ltd. (for short, the Management) dismissed from service three of their workmen after a domestic enquiry conducted against them on certain charges. F

In May 1967, the Lt. Governor of Delhi made a Reference under s. 10 read with s. 12(5) of the Act to the Labour Court, Delhi, to determine :

G

> "Whether the terminations of services of S/Shri H. S. Rawat, Bidhi Chand and Ram Sarup Gupta were unlawful and unjustified, and if so, to what relief are these workmen entitled?"

By an amendment of their written statement in February, 1969, augmented by an application dated 17.8.1971, the Management raised a preliminary objection that since no demand notice had been served on the Management, no industrial dispute had legally come into existence, and as such the Reference was invalid and the Labour H

A Court had no jurisdiction to adjudicate it. By an order, dated September 27, 1972, the Labour Court accepted the objection, holding :

> "... that no industrial dispute came into existence before this reference as the workmen have failed to establish serving of demand on the management prior to this reference. The effect of this finding is that the reference could
B not have been made for adjudication and the same is accordingly invalid and hence the question of deciding the issue as in the reference or other issues does not arise as the industrial dispute under reference did not come into existence in accordance with law before this reference. This award is made accordingly."

C Thereafter, the workmen on 25.10.1972, raised a dispute by serving demand notices on the Management. By his order dated 2.5.1973, the Lt. Governor, Delhi, again made a Reference to the Labour Court, under the Act for adjudication of the same matter relating to the termination of the services of the aforesaid workmen.

The Management raised, *inter alia,* a preliminary objection that a second Reference within one year of the first 'award', dated September
D 27, 1972, was not competent in view of what is contained in sec. 19 of the Act.

By an order dated 2.5.1973, the Labour Court dismissed the preliminary objections. After recording the evidence produced by the parties, the Court held on merits, that the termination of the services of 3 workmen was illegal and unjustified. The Court further found that
E Bidhi Chand workman had become gainfully employed elsewnere as a driver with better emoluments and it was therefore sufficient to award him compensation without any relief of reinstatement, at the rate of 50% of his wages for three years from 1966 to 1969 to the date of his getting employment elsewhere. It further found that Ram Sarup Gupta had remained unemployed after his dismissal in 1966. It therefore directed his reinstatement with full back wages and con-
F tinuity of service. As regards H. S. Rawat, the Court found that he could not have remained unemployed throughout but was doing some work or the other for his living, may be with occasional spells. The Court therefore held that Rawat was entitled to reinstatement and continuity of service with 50% back wages till the award came into operation and he got his reinstatement. This award was made by the Labour Court on 1-5-1975.

G The Management impugned this award by filing a writ petition under Art. 226 of the Constitution in the High Court of Delhi. Only three contentions were canvassed by the Management at the preliminary hearing before the High Court : (i) That the determination, dated 27.9.1972, by the Labour Court was an 'award' as defined in s. 2(b) of the Act, and in view of sub-s. (3) of s. 19, it had to be in operation
H for a period of one year. It could be terminated only by a notice given under sub-ss. (4) & (6) of s. 19. Since no such notice was given, the award continued to be in operation. The second award, dated 1-5-1975, could not be validly made during the period, the

first award was in operation; (ii) The demand for reinstatement was not made by the workmen till 1972 and the Labour Court was not justified in awarding them the relief of reinstatement together with compensation for back wages from 1966 onwards; (iii) The onus to show that the workmen had not obtained alternative employment, after their dismissal, was on the workmen and this onus has not been discharged. On the other hand, the Labour Court wrongfully did not permit the Management to adduce additional evidence to show that the workmen had obtained alternative employment and, in consequence, were not entitled to back wages.

Regarding (i), the High Court held that since the 'award' dated 27.9.1972, was not one which imposed any continuing obligation on the parties, but had ended with its pronouncement, nothing in sub-sections (3) and (6) of sec. 19 was applicable to it.

As regards (ii), the High Court held that once the dismissal of the workmen was found illegal, it was inevitable to award the compensation from the dates of dismissal till they found alternative employment or till the date of the award, as the case may be.

In regard to (iii), the High Court said that the question of burden of proof as to who is to prove, whether the workmen did not get alternative employment for the period for which back wages have been awarded to them could arise only if no evidence was given by either party or if the evidence given by them was evenly balanced. Neither of these circumstances was present before the Labour Court, and there was no good reason to disturb the finding of fact recorded by the Labour Court on this point.

The High Court thus rejected all the three contentions, and, in the result, dismissed the writ petition *in limine*, with a speaking order. Hence this appeal.

Shri G. B. Pai has reagitated all the three points before us. He assails the findings of the High Court, thereon.

Regarding point No. (i) Mr Pai's argument is that the determination, dated 27.9.1972, also, was an 'award' within the second part of the definition of the term in s. 2(b) of the Act, inasmuch as it determined a question relating to an industrial dispute. Emphasis has also been laid on the point that this 'award', dated 27.9.1972 was duly published by the Government under s. 17(1) and had assumed finality under sub-s. (2) of the same section. This award dated 27.9.1972—proceeds the argument—had to remain operative under sub-s. (3) of s. 19 for a period of one year from the date on which it became enforceable under s. 17A i.e., a date one month after its publication. It is submitted that no second Reference could be validly made by the Government during the period the first award remained operative, and since the second Reference, dated 2.5.1973 was made before the expiry of such period of the first award (which had not been terminated in the manner laid down in s. 19), it was invalid and the consequential adjudication by the Labour Court on its basis, was null and void. In this connection counsel has relied upon a

A judgment of this Court in *Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd.* v. *The Workmen and anr.*(1) wherein it was held that when there is a subsisting award binding on the parties, the Tribunal has no jurisdiction to consider the same points in a fresh reference. In that case, the earlier award had not been terminated and the Reference was therefore held to be incompetent. Reference has also been made to a single Bench Judgment of the Allahabad High B Court in *Workmen of Swadeshi Cotton Mills Co. Ltd. v Swadeshi Cotton Mills Co., Ltd., Kanpur and ors.*(2)

As against this, Shri M. K. Ramamurthi maintains that the Labour Court's order, dated May 1, 1972, was not an 'award' within the definition of the term in s. 2(b) inasmuch as it was not a determination, on merits, of any industrial dispute or of any question relating C to an industrial dispute. In this connection reliance has been placed on a judgment of this Court in Civil Appeal No. 241 of 1964 (*Technological Institute of Textiles* v. *Its Workmen and ors.*(3).

Before dealing with the contentions canvassed, it will be worthwhile to notice the relevant statutory provisions.

D The terms 'award' and 'industrial dispute' have been defined in the Act as follows :

> 'Award' means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under E s. 10A". [*vide* s. 2 (b)].
>
> "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, F of any person", [*vide* s. 2(k)].

Section 10 describes the matters which can be referred to Boards, Courts or Tribunals for adjudication. Only clause (i) of subsection (1) is material for our purpose. It provides;

> "Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at G any time by order in writing—
>
> (a) . . . .
>
> (b) . . . .
>
> (c) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any

H

(1) [1968] 1 S.C.R. 581.
(2) 42 Indian Factories Journal p. 255.
(3) [1965] 2 L.L.J. 149.

matter specified in the Second Schedule to a Labour Court for adjudication". A

Sub-section (4) requires the Labour Court to confine its adjudication to those points of dispute and matters incidental thereto which the appropriate Government has referred to it for adjudication.

The material part of section 19 reads as under : B

"(1) .. ..

(2) .. ..

(3) An award shall, subject to the provisions of this section remain in operation for a period of one year from the date on which the award becomes enforceable under **s. 17A;** C

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit :

"Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation. D

(4) Where the appropriate Government, Whether of its own motion or on the application of any party bound by the award, considered that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be, on such reference shall be final. E F

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award. G

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding, on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. H

A (7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be."

There is no dispute that the order on the earlier Reference was made by the Labour Court on 27-9-1972, while the second Reference B with the same terms of Reference to that Court was made by the Government on 2.5.1973, i.e., within one year of the earlier order. It is common ground that the period of one year for which an award normally remains in operation under sub-s. (3) was not reduced or curtailed by the Government under sec. 19 or under any other provision of the Act. It is further admitted between the parties that no notice was given by any party of its intention to terminate the Order dated C 27.9.1972.

The controversy with regard to the first point therefore narrows down into the issues whether the determination dated 27.9.1972, of the Labour Court was an award as defined in s. 2(b) of the Act?

The definition of award in s. 2(b) falls in two parts. The first D part covers a determination, final or interim, *of any industrial dispute.* The second part takes in a determination of *any question relating to an industrial dispute.* But the basic postulate common to both the parts of the definition, is the *existence of an industrial dispute,* actual or apprehended. The "determination" contemplated by the definition is of the industrial dispute or a question relating thereto, *on merits.* It is to be noted further that sec. 2, itself, expressly makes E the definition subject to "anything repugnant in the subject or context". We have therefore to consider this definition in the context of sec. 19 and other related provisions of the Act.

Mr. Pai concedes that the order dated 27.9.1972, is not a determination of any industrial dispute, as such, falling under the first part of the definition. However, his argument is that the expression "or F any question relating thereto" in the second part of the definition is of wide amplitude and should be spaciously construed. It is maintained that a question, whether or not an industrial dispute exists, will itself be a *question relating to an industrial dispute* within the intendment of the second part of the definition.

The contention appears to be attractive but does not stand a close G examination.

Sub-section (1) of sec. 10 indicates when and what matters can be referred to the Labour Court for adjudication. The sub-section expressly makes formation of opinion by the appropriate Government, "that any industrial dispute exists or is apprehended" a condition precedent to the exercise of the power of making a Reference. Sub-H section (4) gives a mandate to the Labour Court to confine its adjudication to those points of dispute which have been specified in the Order of Reference, or are incidental thereto. From a conjoint reading of cl.(b) of s. 2 and sub-section (1) and (4) of sec. 10, it is

clear that in order to be an 'award' within the second part of the definition, a determination must be—(i) an adjudication of a question or point relating to an industrial dispute, which has been specified in the Order of Reference or is incidental thereto : and (ii) such adjudication must be one on merits. A

Now let us test the Labour Court's order, dated 27.9.72 in the light of the above enunciation. That Order did not satisfy any of the criteria indicated above. It did not determine the questions or points specified in the Government Order of Reference. Nor was it an adjudication on merits of any industrial dispute or a question relating thereto. The only question determined by the Order, dated 27.9.1972, was about the existence of a preliminary fact, viz., existence of an industrial dispute which in the Labour Court's opinion was a *sine qua non* for the validity of the Reference and the exercise of further jurisdiction by the Court. Rightly or wrongly, the Court found that this preliminary jurisdictional fact did not exist, because "no industrial dispute had come into existence in accordance with law", and, in consequence, the Reference was invalid and the Court was not competent to enter upon the Reference and determine the matter referred to it. With this finding, the Court refused to go into the merits of the question referred to it. There was no determination on merits of an industrial dispute or a question relating thereto. We are therefore of opinion that Labour Court's determination dated 27.9.1972, did not possess the attributes essential to bring it within the definition of an 'award'. The mere fact that this order was published by the Government under s. 17(1) of the Act did not confer that status on it. B C D E

In the view we take we are fortified by the principle laid down by this Court in *Technological Institute of Textiles* v. *Its Workmen* (supra). In that case, there was a settlement which in the absence of necessary formalities, was not binding on the parties. Certain items of dispute were not pressed and withdrawn under the terms of such settlement. In the subsequent reference before the Industrial Tribunal some of the items of dispute were withdrawn and no award was made in respect thereto. Thereafter, these items were again referred for adjudication along with certain other matters to the Tribunal. It was contended on behalf of the Management that subsequent reference with regard to the items which had been withdrawn and not pressed in the earlier reference, was barred under sec. 19, because the earlier award had not been terminated in full. Ramaswami J., speaking for the Court, repelled this contention, with these observations : F G

> "It is manifest in the present case that there has been no adjudication on merits by the industrial tribunal in the previous reference with regard to the matters covered by items (1) and (3) of the present reference, because the workmen had withdrawn those matters from the purview of the dispute. There was also no settlement in Ex. R. 4, because the demands in question had been withdrawn by the workmen and there was no agreement between the parties H

A in regard thereto. Our conclusion, therefore, is that the bar of s. 19 of the Industrial Disputes Act does not operate with regard to the matters covered by items (1) and (3) of the present reference and the argument put forward by the appellant on this aspect of the case must be rejected."

B Although the facts of the case before us are different, yet the principle enunciated therein viz., that the bar of sec. 19 operates only with regard to a determination made on merits, is fully applicable. By any reckoning, the decision dated 27.9.1972 of the Labour Court by its very nature did not impose any continuing obligation on the parties bound by it. This was an additional reason for holding that the earlier reference was not barred by anything contained C in sub-section (3) or other provisions of section 19.

We have gone through the single Bench decision of the Allahabad High Court in *Workmen of Swadeshi Cotton Mills Co. Ltd.* case (supra). That decision is to the effect that the finding recorded by the Labour Court that the matter referred to it for adjudication was D not an industrial dispute as defined in the Act is itself a determination of a question relating to an industrial dispute, and would fall within the definition of the term "award" under the Act. In our opinion, this is not a correct statement of the law on the point.

E The next submission of Mr. Pai is that since the demand for reinstatement was not duly made by the workmen before 28.10.1972, the Courts below were not justified in awarding to the workmen, compensation for back wages from 1966 onwards.

On the other hand, Mr. Ramamurthi maintains that such a claim F was presumably agitated by the workmen in proceedings before the Conciliation Officer, in 1966. While conceding that technically, no demand notice for reinstatement was served by the workmen on the Management before 25.10.1972, Counsel submits that the Management were aware of the workmen's claim to reinstatement, since 1966, and in these circumstances, the Management should not be allowed to take shelter behind this technical flaw, and deny just compensation to G them from the date of wrongful dismissal.

We have carefully considered the contentions advanced on both sides. After taking into consideration all the circumstances of the case, we are of opinion that the Labour Court was not justified in H awarding compensation to the workmen, for wages relating to the period prior to 25.10.1972 i.e., the date on which the demand notices for reinstatement were served on the Management. To this extent, we would accept the contention of the appellants.

The third contention of the appellants is that the onus of proving that they had not obtained alternative employment elsewhere after the termination of their services, was on the workmen, and they had failed to discharge that onus. A

We find no merit in this contention.

The question of onus oft loses its importance when both the parties adduce whatever evidence they had to produce. In the instant case, both the parties led their evidence and closed their respective cases. Subsequently, at a late stage, the Management made an application for adducing additional evidence. The Labour Court declined that application. The High Court found—and we think rightly, no good reason to interfere with the discretion of the Labour Court. It may be remembered further, that this appeal arises out of a petition under Art. 226 of the Constitution, and in the exercise of that special jurisdiction, the High Court does not reopen a finding of fact based on legal evidence. The findings of the Labour Court to the effect, that after their dismissal, Ram Swarup Gupta was unable to find any alternative employment elsewhere, while Rawat was able to find only intermittent employment elsewhere, were based on evidence produced by the parties. The High Court was therefore right in not interfering with those findings of fact. B C D

Lastly it was urged by Mr. Pai, that the employers had lost confidence in the employees, and therefore, compensation, without reinstatement, would have been adequate relief. It is submitted that the business of the employers is that of Travel Agents and such a sensitive business can be successfully carried on only with the aid of employees whose fidelity and integrity is beyond doubt. It is stressed that the employees of the appellants, have to handle daily lot of cash received from their clients in the discharge of their duties. It is pointed out that the charge against H. S. Rawat was one of misappropriation of such funds and this charge was established in the domestic enquiry. The Labour Court, proceeds the argument, did not displace that finding of the domestic Tribunal, but ignored it on the ground that the charge was stale and had been condoned. In short, the argument is that the employers had lost confidence in this employee. who could no longer be entrusted to perform sensitive jobs on behalf of the Management, without detriment to its business. E F

We are unable to accept this contention.

Firstly, this point was not argued before the High Court. Secondly, the observations of the Labour Court, read as a whole, show that, in its opinion, the charge of misappropriation of funds had not been proved against H. S. Rawat. This is what the Labour Court said on the point : G

> "I am therefore of opinion that the charges had been condoned and they could not be revived again and the act of reviving the charge on account of his Union activities was an act of unfair labour practice on the part of the Management and amounted to victimisation. Even the H

A charges in the charge-sheet Ex. M/5 have not been established before me, that the workman withdrew the funds from the company on false pretences for revenue stamps and misappropriated the same."

Thus there is no factual basis for this belated contention, and we repel the same.

B

For the foregoing reasons, we dismiss this appeal with the modification that in addition to the relief of reinstatement with continuity of service, S/Shri H. S. Rawat and Ram Swarup Gupta shall be entitled to 50%, and full back wages, respectively, from 25.10.1972.

It may be recalled that the special leave to appeal in this case, C was granted on the condition that the appellants shall pay the costs of this appeal to the respondents, in any event. We order accordingly.

P.B.R. *Appeal dismissed.*