

Bank of Baroda Vs. Workmen

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SooperKanoon Citation : sooperkanoon.com/734439

Court : Gujarat

Decided On : Dec-14-1978

Reported in : [1979(39)FLR153]; (1979)GLR335; (1979)IILLJ57Guj

Judge : B.J. Diwan, C.J. and; S.B. Majmudar, J.

Acts : Industrial Disputes Act - Sections 2, 2A, 33C(2) and 36

Appeal No. : Spl. C.A. 2129 and 2504 of 1978

Appellant : Bank of Baroda

Respondent : Workmen

Judgement :

Divan, C.J.

1. Both these Special Civil Applications challenge the same award of the Industrial Tribunal, being the award dated July, 15, 1978, and we will dispose of both these matters by this common judgment.

2. Special Civil Application No. 2129 of 1978 is filed by the management of Bank of Baroda. The first respondent are the workmen of Bank of Baroda and notice of this petition is required to be served on K. R. Mehta, Executive Member of the All India Bank of Baroda Employees Union. The second respondent is Valiben, widow of Shamjibhai Sinduria, residing at Saiyadpura, Surat. Special Civil Application No.

2504 of 1978 is filed by Valiben, widow of Shamjibhai Sinduria, and respondent No. 1 is the Presiding Officer of the Central Government Industrial Tribunal. The second respondent is the Regional Manager of Bank of Baroda and the third respondent is K. R. Mehta.

3. The facts leading to this litigation are as follows : On April 13, 1976, the management of Bank of Baroda terminated the services of one Suresh S. Sinduria who was a permanent employee of the Bank and he was last posted with the Bank of Baroda at Surat. He was working as a clerk at Parsi Sheri Branch of the Bank of Surat. His services were terminated on April 13, 1976. A dispute was raised and ultimately; an individual reference under S. 2A of the Industrial Disputes Act was made to the Industrial Tribunal. The reference was in these terms :

'Whether the action of the management of the Bank of Baroda, Southern Region, Ahmedabad in terminating the services of Shri S. S. Sinduria, clerk, Parsi Sheri Branch of the Bank with effect from 13-4-1976 is justified If not, to what relief is the workman concerned entitled to ?'

Sinduria, the clerk concerned, died on March 9, 1978 but before he died, his evidence was recorded at least with regard to the preliminary issues arising in the reference. On March 16, 1978, there was an award on preliminary points and that award was termed as Award Part I. In that award, it was held by the Tribunal that the dispute that was raised was an individual dispute under S. 2A of the Industrial Disputes Act and secondly, it was held that the union had a right to represent the workman concerned under the provisions of S. 36 of the Industrial Disputes Act. After the death of the workman concerned, an application was filed by the mother of S. S. Sinduria in her capacity as heir and legal representative of her deceased son S. S. Sinduria and she prayed that she be allowed to be joined as a party to the reference and any of the reliefs as might be deemed proper should be granted. This was objected to by the Bank and the reply of the Bank of this application was dated July 6, 1978. The application was presented by the union representing the workman who were second party to the reference, and the request of the union was that since the concerned workman Sinduria had expired on March 9, 1978 at Surat during the pendency of the reference, his mother Srimati Valiben should be

added as a party to the reference. On this application the Tribunal held that the industrial dispute still survived as the remaining workmen employed by the Bank were interested in the ultimate adjudication of that dispute which would ultimately concern all workmen in the employment of the Bank; this being the legal position, it would not be possible according to the Tribunal to accept the contention of the Bank that because the concerned workman had expired, the industrial dispute covered by the reference had come to an end and therefore the reference itself had become infurctuous. The Tribunal came to the conclusion that the industrial dispute covered by the reference was still alive and therefore, it would have to be adjudicated upon on its merits and that the reference would, therefore, legally lie for adjudication and the parties would be permitted to lead evidence, if they so desired, for the ultimate adjudication of the industrial dispute covered by the reference. The Tribunal however decided that it was not necessary to join the mother of the deceased workman as a party to the reference because the other workmen were clearly a party to it who were duly represented by the union on whose behalf Shri K. R. Mehta appeared before it in the reference. Hence, the application filed by the union as well as the reply were treated as disposed of and it was directed that the hearing of the reference be expedited. Thereafter the Bank management filed Special Civil Application No. 2129 of 1978. Special Civil Application No. 2504 of 1978 has been filed by the mother of S. S. Sinduria praying that her application for being jointed as heir and legal representative of the deceased workman should have been granted and she should have been brought on record in her capacity as the heir and legal representative of the deceased workman.

4. Mr. Desai for the Bank is right when he contends that the order passed on July 15, 1978 regarding representation of the deceased workman is in consistent with the earlier order dated March 16, 1978 which proceeded on the footing that this was an individual dispute raised under S. 2A of the Industrial Disputes Act. Under S. 2A of the Act is provided :

'Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge,

dismissal, retrenchment or termination shall be deemed to an industrial dispute notwithstanding that no other workman nor any union of workmen is party to the dispute.'

It is true that when the reference to the Industrial Tribunal was made by the appropriate Government, instead of mentioning that the adjudication was required to be between the management of the Bank of Baroda and S. S. Sinduria, it was mentioned as adjudication between the management of Bank of Baroda and their workmen, but really speaking, looking to the terms of reference, it obviously was a reference of an individual dispute between S. S. Sinduria, the clerk whose service were terminated, and the management of Bank of Baroda. To that extent, the order passed on March 16, 1978 seems to have been on the correct footing. However, when the Tribunal passed the order dated July 15, 1978, the Tribunal proceeded on the footing that it was a dispute between the union representing all workmen of the Bank of Baroda and the management, and thus inconsistency between the two orders has arisen.

5. We will not go into this question of inconsistency between the two orders because now we have the application of the mother of S. S. Sinduria before us and the sole question that remains for determination is whether, when a workman whose dispute before the Industrial Tribunal is pending dies, especially when the reference is under S. 2A of the Industrial Disputes Act, the reference before the Tribunal can be continued on behalf of the estate of the deceased workman by the heirs and legal representatives of the deceased workman.

6. We must point out that there is a sharp cleavage of opinion between the Assam, Patna, Orissa and Allahabad High Courts on the one hand and Kerala High Court on the other. Assam, Patna, Orissa and Allahabad High Courts have held that on the death of a workman under such circumstances, the industrial dispute cannot survive and the reference must be held to come to an end, whereas the Kerala High Court has held that the right to sue survives the deceased workman and the reference can be continued after bringing on record the heirs and legal representatives of the deceased workman. The first decision in point of time is that of Assam High Court in *Management of Toclai Experimental Station, Cinnamara v.*

State of Assam and others, A.I.R. 1960 Assam 132. The matter was initially before a Division Bench consisting of Sarjoo Prosad C.J. and Mehrotra, J. and on difference of opinion between the two learned Judges, the matter was referred to the third Judge Deka, J., and Deka J. agreed with the view of Sarjoo Prosad, C.J. The majority of the Judges, Sarjoo Prosad, C.J. and Deka, J. held that having regard to the expression 'any person' occurring in S. 2(k) of the Act which defines an 'industrial dispute' the two crucial limitations are that the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other and secondly that the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of Labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest, the dispute cannot be said to be a real dispute between the parties. The Assam High Court in that case stated that the test is that the dispute should be capable of settlement or adjudication by one party giving necessary relief to the other and since the workman concerned had died, any settlement on that basis was out of the question and that this limitation itself would indicate that the workman did not come within the definition of 'any person' whose case the workmen were competent to espouse. It was held that the cause of a dead man could not be taken up by workmen's union and even if they had an interest in the employment or non-employment of the workman, it ceased along with his death. It was further held that in the case of an employer, his antecedent liability would survive the closure of his business but in the case of an employee, his claim to reinstatement expires along with his death and it no longer remains a dispute capable of settlement or adjudication. Therefore, a reference of such a dispute goes beyond the purview of the Industrial Disputes Act. The next decision in point of time is the decision of the Patna High Court Bihar Working Journalists' Union v. H. K. Chaudhuri, A.I.R. 1968 Pat. 135. There the Patna High Court held that the dispute does not cease to be an industrial dispute upon the death of the workman concerned and the question in each case depends upon the nature or character of the dispute. The dispute about whether a workman (since deceased) had been a sub-editor or a chief editor of a newspaper by reason of a set of duties and

functions he had been performing, is of such a nature as the successor in office of the deceased workman or workmen who have been discharging identical duties and functions would be interested in the adjudication of the question. Such a dispute does not cease to be an industrial dispute upon the death of the concerned workman and the Tribunal will have jurisdiction to adjudicate thereon if the successor in office of the deceased workman can be represented before the Tribunal by the same union which was representing the deceased workman. There the test applied by the Patna High Court was not the test of heirs and legal representatives of the deceased workman continuing to represent the interest of the deceased workman before the Tribunal but the test that was applied was whether the dispute between the deceased workman and the employer was such as had impact on other workman who succeeded him in of in that particular office. G. N. Prasad, J., speaking for the Division Bench of the Patna High Court, observed at page 136 :

'..... there can be no room for doubt that the authority of a person or a body of persons to represent another persons cannot continue beyond the latter's lifetime. The principle of representation is based upon the relationship of principal and agent. Where the principal is dead, the authority of the agent to act for him automatically ceases. Therefore, it must follow that the petitioner-union was not competent to represent the case of Shri Abhiram Jha before the Tribunal after his death.'

It was further observed :

'It is impossible to imagine that the petitioner-union was interested in securing to the heirs of Shri Abhiram Jha any extra money by way of emoluments which, according to it, Shri Abhiram Jha was entitled to. In other words, the union had or has no concern with the monetary claim of the heirs or legal representatives of the deceased. The latter could pursue their own remedy before a competent Court according to law. But the petitioner-union could not insist upon adjudication of the dispute centering round Shri Abhiram Jha before the Industrial Tribunal'.

Thus, the view was clearly expressed that it was not open to the heirs and legal representatives of the deceased workman to continue the industrial reference

particularly through the union which was espousing the cause of the deceased workman. In *Haramani Naik v. Management*, (1978) Labour and Industrial Cases, 1630, Orissa High Court has held on the same lines as the Assam and Patna High Courts. The question was whether during the pendency of an application under S. 33C(2) of the Industrial Disputes Act when a workman dies during the pendency his legal representative can be substituted. R. N. Misra, J. speaking for the Division Bench of the Orissa High Court held that the heirs and legal representatives of the deceased workman could not be brought on the record. The learned Judges of the Orissa High Court followed the decision of the Delhi High Court in *Yad Ram v. Bir Singh*, (1974) Labour and Industrial Cases, 970 and the following passage from the Delhi High Court judgment was accepted as laying down the correct law :

'..... an application under S. 33C(2) of the Act can be made only by the workman himself and it must follow that if the workman dies during the pendency of such application, his heirs, successors and legal representatives cannot continue it in the specified Labour Court because this Court cannot recognize anybody other than a workman as the applicant before it. We should not be taken to have held that the right to sue for money or equivalent of money of the benefit due to a workman does not survive. It survive to the heirs, successors and legal representatives and they can take appropriate proceedings by way of a suit in a civil Court. They cannot, however, either continue after his death an application made by the workman under S. 33C(2) or make such an application themselves in the event of his death.'

As regards as application under S. 33C(2), the Bombay High Court has taken a view contrary to the view held by the Delhi High Court. The Bombay view has been also referred to by the Orissa High court and is set out in the case of *Sitabai v. Auto Engineers*, (1972) Labour and Industrial Cases, 733. The Allahabad High Court has held in *M/s. Moti Lal Padam Pat Sugar Mills Co. Pvt. Ltd. v. Labour Court, Kanpur*, (1978) Labour and Industrial Cases, 1129, that once a dispute relating to the termination of an individual workman is taken up by the union, the entire community of workmen acquires an interest in the dispute, it ceases to be an individual dispute and is transformed into an industrial dispute affecting the

interest of the entire body of workmen. Hence, if that individual workman dies during the pendency of the reference, made by the State Government under S. 10(1)(c), the reference does not become infurctuous. But this decision proceeds on the footing that the union of workmen is not there as an agent of the individual workman but as the principal party itself which is interested in the adjudication of the dispute in the interest of industrial peace and harmony. The question that arises fairly and squarely before us of a dispute under S. 2A of the Industrial Disputes Act was not before the Allahabad High Court. In that case, the cause of the industrial workman was espoused by the union and, really speaking it was a dispute between the union as such espousing the cause of an individual workman and the employer. It no longer remained a dispute between an individual workman and the employer.

7. In *Gwalior Rayon v. Labour Court*, [1978-II L.L.J. 188,] the Kerala High Court has dealt with this very point. In paragraph 23 at page 198, Chandrasekhara Menon, J. sitting singly, observed :

'The scope of adjudication by a Tribunal under the Industrial Disputes Act is much wider than determination of the legal rights of the parties involved of redressing the grievances of an aggrieved workman in accordance with law. As Gajendragadkar, J., points out in *Cawnpur Tannery Ltd. v. Guha*, [1961-II L.L.J. 110 at p. 112], the adjudication by the Industrial Disputes Act is only an alternative form of settlement of Industrial disputes on a fair and just basis. The primary duty of the Industrial Tribunal is to establish peace in the industry between employer and workmen. Any unfair action by the management even against an individual worker might cast its shadow on the general body of workers who might get perturbed by such action. A resolution of the dispute might then become necessary for industrial peace notwithstanding the death of the workman concerned pending proceeding. The personal relief to the workman concerned to a certain extent occupies a subsidiary place in the scheme of things. Not that it is not important. It is only a consequential result of the decision primarily arrived at securing industrial peace settling the apprehension of the workmen without losing sight of the interest of the industry. As Rajamannar, C.J. stated in *Shree Meenakshi Mills Ltd. v. State of Madras* [1952-II L.L.J. 326-DB], the essential object of enacting the Industrial Disputes Act is to

provide recourse to a given form of procedure for the settlement of disputes in the interest of maintenance of peaceful relations between the parties without apparent conflicts such as are likely to interrupt production and entail other damages. In the circumstances proceedings before the Labour Court or the Industrial Tribunal under the Industrial Disputes Act cannot be equated to a personal action in torts in a Civil Court which would come to an end with the death of the aggrieved party to the dispute. In the general set up on an industry, in the nature of the relationship between the employer and the employees, a dispute between an employer and even an individual employee generally affects the entire community of workmen in the industry. They acquire an interest in the dispute. It ceases to be an individual dispute and becomes an industrial dispute affecting the interest of the entire body of workmen. Any decision of the Labour Court will affect the interest of the whole body of workmen and the dispute, therefore, cannot die with the death of the individual workman. Before S. 2A of the Act was introduced the Courts had said that an individual dispute should be taken up by the workmen as such before it can become an industrial dispute. Section 2A makes an individual dispute though not taken up by the collective body of workers, an industrial dispute.'

In paragraph 25, he further observed :

'Even in respect of ordinary judicial proceedings can it be said that the death of party to the proceedings will terminate the action in all cases Even under the English Common Law before the Law Reform (Miscellaneous provisions) Act, 1934 was passed to provide generally for the survival of causes of action in tort, death was considered as extinguishing liability only in respect of cause of action in tort. This was Winfield says in his Law of Tort-due in part to the historical connection of the action of trespass, from which much of our law of tort is derived, with the criminal law and in part to the reference often made to the maxim *actio personalis moritur cum persona* which, though traceable to the fifteenth century, probably did no more originally than state in Latin a long-established principle concerning torts such as assault and battery of which it was neither the historical cause nor the rational explanation. Actions in contract generally escaped the rule, and so too did those in which property had been appropriated to a deceased person and added to his own estate.'

The learned Judge there held ultimately :

'Therefore, we see no reason why the Labour Court should cease to exercise jurisdiction in considering the question whether the termination of the services of the two employees was justified or not merely because they died during the course of the proceedings. A decision on that is certainly in the interest of the other employees. And the benefits that would be due to the deceased employees on the finding of the Labour Court can be realised on behalf of their estate by their legal heirs under S. 33C(2) of the Act.'

8. It may be pointed out that under S. 306 of the Indian Succession Act, 'All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.' In this context, it must be pointed out that, so far as the granting of relief of reinstatement is concerned, it would be nugatory on the death of the workman concerned pending the reference before the Tribunal or the Labour Court, as the case may be. However, reinstatement involves the concept of backwages also and very often the Tribunal has to pass orders providing for the backwages from the date of wrongful termination of the services till the date of reinstatement. It is only under the Industrial Disputes Act that in the field of industrial relations, the Tribunal concerned can direct reinstatement of the workman. Under the ordinary civil law, it is not open to a civil Court to direct reinstatement of a workman. The only thing that a civil Court can do is to provide for damages for wrongful termination of service or wrongful dismissal. Again, the whole concept under the Industrial Disputes Act of the Tribunal ascertaining whether the termination of services was proper, legal and just, is unknown to the civil Courts. So, in the case of a deceased workman where the reference is under S. 2A of the Industrial Disputes Act, the heirs and legal representatives can agitate the question, firstly, whether the termination of the deceased workman was just, legal and proper, and secondly, if it was wrongful and invalid, then, what compensation in terms of money could

have been given to the workman from a particular date fixed by the Tribunal till the date of reinstatement and if reinstatement cannot be granted because of the death of the workman, till the date of his death. It is therefore in this context of S. 306 of the Succession Act that the right to prosecute these special proceedings before the Industrial Tribunal survives to the administrators, executors, heirs and legal representatives of the deceased workman. It is only a cause of action for personal injury or in the case of defamation or assault or battery or malicious prosecution which cannot be said to survive after the death person concerned.

9. With great respect to the learned Judges of the Assam, Patna, Orissa and Patna High Courts, we are unable to agree with their view that on the death of a deceased workman, the heirs and legal representatives of the deceased workman as representing the estate of the deceased cannot continue the reference before the Tribunal.

10. Apart from the special rights which are now recognised only in the context of industrial relations and special powers conferred on the Tribunal, there is also the concept of special remedies like S. 33C(2) which are provided only under the Industrial Relations Act. If in order to maintain industrial peace an assurance has to be given to all workmen that their just grievances will be inquired into in accordance with this special procedure and law, namely, the Industrial Disputes Act and the law pertaining to industrial disputes and relations, it is as a part of that maintenance of industrial peace that the law should recognise that on the death of a deceased workman, his estate represented by his heirs and legal representatives or his administrators, as the case may be, will get that which he would have got if he had been alive and at least what he would have got upto the period of his death. Under these circumstances, in our opinion, the view taken by the learned Judges of the Kerala High Court and the learned Judge of the Bombay High Court appears to be the better view and the more correct view. Taking a narrow and technical view in the field of industrial relations helps no one and least of all the cause of industrial peace.

11. In *The U.P. Electric Supply Co. Ltd. v. The Workmen*, A.I.R. 1971 S.C. 2521, it has been pointed out by Mitter, J., speaking for the Supreme Court in paragraph 7

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'It was pointed out by this Court that the entire scheme of the Act assumed that there was in existence a dispute and 'the provisions of the Act relating to lock-out, strike, lay-off, retrenchment, conciliation and adjudication proceedings, the period during which the award was to be in force have meaning only if they refer to an industry which is running and not one which is closed. 'Reference was made to Messrs. Burn & Co. Ltd. v. Their Workmen, (A.I.R. 1957 S.C. 38) and the observations of this Court that the object of all labour legislation was firstly to ensure fair terms to the workmen, and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer. Both these can have their fulfilment only in an existing industry and not a dead industry.'

In paragraph 11, it was further observed :

'In our view neither the observations in this case nor in U.P. Electric Supply Co. Ltd. v. R. K. Shukla (A.I.R. 1970 S.C. 237) have any application to the facts in the case before us. Retrenchment has been specially provided for by the Legislature and the question of closure of an industry and the transfer of an industry have been expressly provided for in the Industrial Disputes Act. Although the main purpose of the Act is to provide for collective settlement of disputes and maintenance of industrial peace, we cannot hold that a Tribunal which is called upon to adjudicate on a dispute relating to share of the profits earned by the company in the past on behalf of the workman becomes functus officio or that the dispute becomes incapable of determination under the Act when the industry is closed. The claim, as already pointed out it for services rendered in the past and dispute was a live one at the time when the reference was made by the State Government and indeed continued so for more than three years thereafter. It was only because of the protracted proceedings of the Tribunal that the award came to be made as late as November, 1965. The closure of the business long after the rendering of the services by the workmen and the reference of the dispute to the Tribunal cannot wipe out the claim of the workmen or annul the adjudication in respect thereof.'

If the closure of the industry pending the reference cannot render the Tribunal functus officio, equally, on the other side, the death of the workman, the other party to the dispute, cannot also render the Tribunal functus officio. The observations of the Supreme Court in The U.P. Electric Supply Co.'s case (supra) when transferred to the other side to the dispute, namely, the workman, supports the conclusion that we have arrived at. It was further observed : 'There is no logic in the submission made on behalf of the appellants that the ascertainment of the liability even with regard to the working of the industry in the past can take place only during the subsistence of the relationship of master and servant between the employers and the employed.' These observations of the Supreme Court clearly indicate that the reasoning of the learned Judges of the Assam High Court has not found favour with the Supreme Court in The U.P. Electric Supply Co.'s case.

12. For the reasons stated above, we hold that, on the death of the workman, even when the reference is of an individual dispute under S. 2A of the Act, the Tribunal does not become functus officio or the reference does not abate merely because, pending adjudication by the Tribunal, the workman concerned dies. It is always open to the heirs and legal representatives of the deceased workman to have the matter agitated and have the matter decided at the hands of the Tribunal. Mere accidental occurrence of the death of the workman concerned cannot come to the rescue of the employer so far as adjudication proceedings are concerned.

13. It is true as Mr. Desai for the Bank management, has pointed out that at the stage of conciliation proceedings, the union was merely appearing in a representative capacity under S. 36(1) of the Industrial Disputes Act instead of the workman being represented by an advocate as would be the case in a case before a civil Court. Under S. 36(1), a workman can be represented by any member of executive or other office bearer of the trade union of which he is a member or any member of any federation of other unions to which the trade union, of which he is a member, is affiliated or where the workman is not a member of any particular trade union, by any other trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed. It is therefore clear that in the conciliation proceedings, the workman Sinduria was represented by the union under S. 36(1)

and it was not a sponsoring union in the sense of the union taking up the cause on behalf of the workmen in the dispute between Sinduria and the management. Under these circumstances, there is considerable substance in the contention of Mr. Desai that the dispute which was referred by the Government to the Tribunal was not a subsisting dispute between the employment and the union but was a dispute between the management and the individual workman and in those proceedings, the union was representing the workman under S. 36(1) since the reference in terms was under S. 2A of the Act.

14. Under these circumstances, we allow Special Civil Application No. 2504 of 1978 filed by the mother of the petitioner and direct the Tribunal to allow the proceedings to be continued by the mother as the heir and legal representative of the deceased workman. Special Civil Application No. 2129 of 1978 filed by the management of the Bank fails and is dismissed because, though the conclusion of the Tribunal was based on wrong reasoning, the ultimate conclusion was correct, namely, that the reference did not abate on the death of the workman and the Tribunal had not become functus officio on the death of the workman. Rule is therefore discharged in Special Civil Application No. 2129 of 1978 with no order as to costs. Rule is made absolute in Special Civil Application No. 2504 of 1978 with no order as to costs.