MESSRS. KAMARHATTY CO. LTD.

v.

SHRI USHNATH PAKRASHI

1959

May 21.

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Power of Tribunal—Order of re-instatement, when can be made—Industrial Disputes Act (14 of 1947), ss. 33A, 10.

The respondent made an application under s. 33A of the Industrial Disputes Act, 1947, which, *inter alia*, stated that there was no reason for retrenchment on account of the closure of a ration shop, and that at any rate he was longer in service than others who had been retained, and, therefore, the principle of "last come, first go" had been violated. The Tribunal dismissed the application whereupon the respondent appealed to the Appellate Tribunal which allowed the appeal and refused permission to retrench.

The Appellant Company was granted special leave to appeal only on the limited question as to whether an order of re-instatement can be made on an application under s. 33A of the Act.

Held, that the complaint under s. 33A of the Industrial Disputes Act, 1947, is as good as a reference under s. 10 of the Act and the Tribunal has all the powers to deal with it as it would have in dealing with a reference under s. 10 of the Act and it is open to the Tribunal in proper case to order re-instatement.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 310 of 1954.

Appeal by special leave from the judgment and order dated March 22, 1956, of the Labour Appellate Tribunal of India, Calcutta in Appeal No. Cal. 183 of 1955.

N. C. Chatterjee, S. N. Mukherjee and *B. N. Ghosh*, for the appellant.

Sukumar Ghosh, for the respondent.

1959. May 21. The Judgment of the Court was delivered by

WANCHOO J.—This appeal by special leave against the decision of the Labour Appellate Tribunal of India is limited to the question whether an order of reinstatement can be made on an application under s. 33-A of

Wanchoo J.

1959

Kamarhatty Co., Ltd. v. Ushnath Pakrashi

Wanchoo J.

the Industrial Disputes Act, 1947 (hereinafter called the Act). The brief facts necessary for the decision of this question are these. The appellant is a Jute Mill. There was a dispute pending before an Industrial Tribunal between a number of jute mills in West Bengal and their employees, and the appellant was a party to that dispute. During the pendency of that dispute, the appellant laid-off the respondent who was an employee in the ration shop maintained by the appellant from July 19, 1954, as rationing of food-stuff came to an end from July 10, 1954. The reason for the lay-off was that the ration shop was closed following the end of rationing. This resulted in the staff in that shop becoming surplus. Consequently, nine persons were selected for retrenchment on the principle of "last come first go", and the respondent was one of them. The appellant also applied under s. 33 of the Act to the Industrial Tribunal for permission to retrench the respondent along with others. Shortly before the application under s. 33, the respondent had applied under s. 33-A of the Act and his case was that there was no reason to make any retrenchment on account of the closure of the ration shop and that he was at any rate longer in service than others who had been retained and therefore the principle of "last come first go" had not been followed. It was also said that the respondent had been laid-off as he was an active worker of the union and as such was not in the good books of the appellant. It was, therefore, prayed that the respondent should be allowed full wages and amenities since the so-called lay-off, which was nothing more nor less than retrenchment and that he should be reinstated.

The Industrial Tribunal came to the conclusion that the lay-off was justified because of the closure of the ration shop and gave permission to the appellant to retrench the respondent on the principle of "last come first go". The respondent appealed to the Labour Appellate Tribunal. He did not urge there that there was no necessity for retrenchment at all. What was urged there was that the Industrial Tribunal was wrong in holding that the principle of "last come first

go" had been followed in this case. The Appellate Tribunal came to the conclusion that the respondent had been in service much longer than others who had been retained and therefore the principle of "last come first go" had been violated. In consequence, the appeal was allowed and the permission to retrench the respondent was refused. The Appellate Tribunal also ordered that the respondent should be reinstated in service without any break in the continuity of service and the order of the appellant in laying him off and discharging him in effect from July 19, 1954 was set aside. Thereupon the appellant came to this Court and was granted special leave on the limited question set out above.

In our opinion, the answer to the limited question on which the special leave has been granted can only be one in view of the language of s. 33-A. That section lays down that "where an employer contravenes the provisions of s. 33 during the pendency of proceedings before a tribunal, any employee aggrieved by such contravention, may make a complaint in writing to the tribunal and on receipt of such complaint the tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act and shall submit its award to the appropriate government and the provisions of this Act shall apply accordingly." It is thus clear that a complaint under s. 33-A of the Act is as good as a reference under s. 10 of the Act and the tribunal has all the powers to deal with it as it would have in dealing with a reference under s. 10. It follows, therefore, that the tribunal has the power to make such order as to relief as may be appropriate in the case and as it can make if a dispute is referred to it relating to the dismissal or discharge of a workman. In such a dispute it is open to the tribunal in proper cases to order reinstatement. Therefore a complaint under s. 33-A being in the nature of a dispute referred to a tribunal under s. 10 of the Act, it is certainly within its power to order reinstatement on such complaint, if the complaint is that the employee has been dismissed or discharged in breach of s. 33.

1959

Kamarhatty Co., Ltd. v. *Ushnath Pakrashi*

Wanchoo J.

Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs of this Court.

Appeal dismissed.

1959

May 21

THE MANAGEMENT OF HOTEL IMPERIAL, NEW DELHI & OTHERS

v.

HOTEL WORKERS' UNION

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Employer seeking permission to dismiss workmen as result of enquiry—Suspension of workmen pending decision of such application by Tribunal—Validity—Workmen, if entitled to wages during period of suspension—Grant of interim relief—Power of Supreme Court—Industrial Disputes Act, 1947 (14 of 1947), ss. 10(4), 33.

The appellants, who were the managements of the three hotels, decided to dismiss some of their workmen who were found guilty of misconduct as a result of enquiries held by them and suspended them without pay pending the receipt of the permission of the Industrial Tribunal under s. 33 of the Industrial Disputes Act, 1947. The workmen applied to the Industrial Tribunal for the grant of interim relief pending disposal of the applications and the Tribunal granted the relief prayed for amounting to full wages and a sum of Rs. 25 per head per month in lieu of food. The managements appealed against such grant, but the Labour Appellate Tribunal dismissed the appeals. The appellants came up to this court by special leave. The two questions for decision in the appeals were, (1) whether any wages were at all payable to the suspended workmen pending permission being sought under s. 33 to dismiss them and the decision of the applications under s. 33 of the Act, and, (2) whether the Industrial Tribunal was competent to grant interim relief except by an interim award that was published.

Held, that it was well settled that under the ordinary law of master and servant the power to suspend the servant without