February, 9

M/S. KUNDAN SUGAR MILLS

v.

ZIYAUDDIN AND OTHERS.

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, AND K. C. DAS GUPTA, JJ.)

Industrial Dispute—Rights of employer to transfer a workman—If implicit in every contract of service.

The General Manager of the appellant Mills ordered the transfer of four workmen from the appellant mill to a new mill, which had been purchased subsequently. The only connection between the two mills was the identity of ownership and, but for it, one had nothing to do with the other. The concerned workmen protested to the said order of transfer and did not acceed to the request, thereupon they were served with notice for disobedience of standing orders and were called upon for explanation which the workmen did and thereafter they were dismissed from service. The Labour Appellate Tribunal found that the management had no right to transfer the workmen to the new factory and therefore the order dismissing them was illegal. The appellants came up by special leave before the Supreme Court and contended that the right to transfer an employee by an employer from one of his concerns to another is implicit in every contract of service. The question is whether a person employed in a factory can be transferred to some other independent concern started by the same employer at a stage subsequent to the date of the employment.

Held, that apart from any statutory provision, the right of an employee and an employer are governed by the terms of contracts between them or by the terms necessarily implied therefrom; but in the absence of an express agreement between the employer and employees it cannot necessarily be implied that the employer has the right to transfer the employee to any of its concerns in any place, and that the employee has a duty to join the concern to which he may be transferred.

In the instant case, it was not a condition of service of employment of the concerned workmen either express or implied that the employer had the right to transfer them to a new concern started by the employer subsequent to the date of the employment.

Alexandre Bouzourou v. *The Ottoman Bank*, A.I.R. 1930 P.C. 118, *Mary (Anamalai Plantation Workers' Union)* v. *Selaliparai Estate*, (1956) I.L.L.J. 243 and *Bata Shoe Company, Ltd* v. *Ali Hasan*, (1956) I.L.L.J. 278, discussed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 136 of 1958.

Appeal by special leave from the decision dated April 30, 1956, of the Labour Appellate Tribunal of India at Lucknow in Appeal No. III-45 of 1956,

arising out of the award dated February 6, 1956 of the State Industrial Tribunal, Allahabad, in reference No. 96 of 1955.

Ram Lal Anand, I.M. Lal and S. S. Sukla, for the appellants.

B. D. Sharma, for respondents Nos. 1 to 5.

C.P. Lal and *G. N. Dikshit,* for respondent No. 6.

1960. February 9. The Judgment of the Court was delivered dy

SUBBA RAO, J.—This is an appeal by special leave against the order of the Labour Appellate Tribunal of India setting aside the award of the Industrial Tribunal, Allahabad, and directing the re-instatement of the workers in Kundan Sugar Mills at Amroha. "Kundan Sugar Mills" is a partnership concern and owns a sugar mill at Amroha. The respondents 1 to 4 were employed by the appellant as seasonal masons in the year 1946. In 1951 the partners of the appellant-Mills purchased the building machinery and other equipment of another sugar mill at Kiccha in the district of Nainital. They closed the said mill at Kiccha and started it at Bulandshahr. The new factory was named Pannijee Sugar & General Mills, Bulandshahr. On January 19, 1955, the General Manager of the appellant-Mills ordered the transfer of the respondents 1 to 4 from the appellant-Mills to the new mill at Bulandshahr. The said respondents through their representative, the fifth respondent, protested to the General Manager against the said transfer. But the General Manager, by his letter dated January 22/24, 1955, insisted upon their joining the new mill at Bulandshahr. But the said respondents did not accede to his request. On January 28, 1955, the General Manager served a notice on the respondents 1 to 4 stating that they had disobeyed his orders and thereby committed misconduct under Standing Order No. L(a). They were asked to submit their explanation as to why action should not be taken against them under the Standing Order. The Labour Union, by its letter dated January 31, 1955, denied the charges. On February 2, 1955, the General Manager made an order dismissing the respondents 1 to 4 from service on the ground that

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they had disobeyed his order of transfer and thus they were guilty of misconduct under Standing Order No. LI(a). The Labour Union thereafter raised an industrial dispute and the Government of U.P. by its notification dated November 7, 1955, referred the following issue for decision to the State Industrial Tribunal for U. P. at Allahabad:

> "Whether the employers have wrongfully and/or unjustifiably terminated the services of Sarva Shri Zia Uddin, Raisuddin, Shafiquddin and Ahmed Bux for refusal to obey the orders of tranfer to M/s. Pannijee Sugar and General Mills Co., Bulandshahr. If so, to what relief are the workmen entitled."

The State Industrial Tribunal by its order dated February 6, 1956, made its award holding that the management was within its rights and that, as the respondents 1 to 4 had disobeyed the order of the management, they were properly dismissed by the management. The said respondents through their Union, respondent No. 5, perferred an appeal to the Labour Appellate Tribunal of India and the said Appellate Tribunal held that the management had no right to transfer the respondents 1 to 4 to the new factory and therefore the order dismissing them was illegal. The management has preferred the present appeal against the said order of the Labour Appellate Tribunal.

Learned counsel for the appellant raised before us the following two questions: (1) The right to transfer an employee by an employer from one of his concerns to another is implicit in every contract of service; (2) the State Industrial Tribunal having held that both the concerns, i.e., the mills at Amroha and the mills at Bulandshahr, formed one unit, the Appellate Tribunal had no juridiction to set aside that finding under s. 7(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950.

To appreciate the first contention, it is necessary to notice the undisputed facts in this case. It is true that the partners of the Sugar Mills at Amroha own also the Sugar Mills at Bulandshahr; but they were proprietors of the former Mills in 1946 whereas they purchased the latter mills only in the year 1951 and

started the same in Bulandshahr in or about 1955. The respondents 1 to 4 were employed by the owners of the appellant-Mills at the Sugar Mills at Amroha at a time when they were not proprietors of the Sugar Mills at Bulandshahr. It is conceded that it was not an express term of the contract of service between the appellant and the respondents 1 to 4 that the latter should serve in any future concerns which the appellant might acquire or start. It is also in evidence that though the same persons owned both the Mills they were two different concerns. In the words of the Appellate Tribunal, the only connection between the two is in the identity of ownership and, but for it, one has nothing to do with the other. It is also in evidence that an imported workman at Amroha is entitled to house-rent, fuel, light and travelling expenses both ways, while at Bulandshahr the workmen are not entitled to any of these amenities. The workmen at Amroha are entitled to benefits under the Kaul Award while those at Bulandshahr are not so entitled. The General Manager, E.W.1, in his evidence stated that "the interim bonus of the Bulandshahr factory as ordered by the Government in November 1955 was Rs. 11,000 while for Amroha it was nearly $1\frac{1}{2}$ lacs". He also stated that "the bonus for last year at Amroha would be probably equal to $1\frac{1}{2}$ months' wages and at Bulandshahr equal to about 4 or 5 days' wages." It is also in evidence that apart from the disparity in the payment of bonus, the accounts are separately made up for the two mills. It is clear that the two mills are situated at different places with accounts separately maintained and governed by different service conditions, though they happened to be under the common management; therefore, they are treated as two different entities.

The question of law raised in this case must be considered in relation to the said facts. The argument of the learned counsel for the appellant that the right to transfer is implicit in every contract of service is too wide the mark. Apart from any statutory provision, the rights of an employer and an employee are governed by the terms of contracts between them or by the terms necessarily implied therefrom. It is

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conceded that there is no express agreement between the appellant and the respondents whereunder the appellant has the right to transfer the respondents to any of its concerns in any place and the respondents the duty to join the concerns to which they may be transferred. If so, can it be said that such a term has to be necessarily implied between the parties? When the respondents 1 to 4 were employed by the appellant, the latter was running only one factory at Amroha. There is nothing on record to indicate that at that time it was intended to purchase factories at other places or to extend its activities in the same line at different places. It is also not suggested that even if the appellant had had such an intention, the respondents 1 to 4 had knowledge of the same. Under such circumstances, without more, it would not be right to imply any such term between the contracting parties when the idea of starting new factories at different places was not in contemplation. Ordinarily the employees would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. The matter does not stop there. In the instant case, as we have indicated, the two factories are distinct entities, situated at different places and, to import a term conferring a right on the employer to transfer respondents 1 to 4 to a different concern is really to make a new contract between them.

The decisions cited at the Bar do not in the least sustain the appellant's broad contention. In *Alexandre Bouzourou* v. *The Ottoman Bank* (1) the appellant was an employee of the respondent-bank. The bank transferred him from one branch to another branch of the bank situated in different towns. As he refused to comply with the order of transfer, he was dismissed. Thereafter, he filed a suit to recover damages from the bank for wrongful dismissal. It was argued before the Judicial Committee that under the terms of his contract of service the sphere of his employment included only the head office and not the branches of the bank. The evidence in that case showed that transfer was one of the ordinary incidents of the bank's employment, being usually concurrent with an

(1) A.I.R. [1930] P.C. 118, 119.

increase of salary and responsibility, and suggested no more than that the bank considered their officials' convenience where possible. Indeed the appellant therein did not even suggest in his correspondence that the transfer was a breach of his contract. On these circumstances the Judicial Committee observed as follows at p. 119:

> "From the point of view of proper organization of their staff, it is difficult to assume that the Bank would willingly agree that their employees should not be bound to serve outside the place where the contract was made except with their consent, and, in their Lordships' opinion such a condition of the contract would require to be clearly established."

The essential distinction between that case and the present one is that there the bank with its branches was one unit and the records clearly indicated that transfer was one of the ordinary incidents of service in the Bank. In such circumstances when a person joined such a service, the Privy Council found it easy to imply a term of transfer. That decision is therefore not of any relevancy to the present case. In *Mary (Anamalai Plantation Workers' Union)* v. *Selaliparai estate* (2), labour was recruited in the plantations without any differentiation being made between factory and field workers and it had been the common practice prevailing for several years to transfer the factory workers to the field and vice-versa, according to the exigencies of work. A worker who had been appointed in such a plantation was transferred, owing to mechanisation in the factory, from the factory to the field. The Labour Appellate Tribunal of India held that in the circumstances of the case the liability to be so transferred must be deemed to be an implied condition of service. So too in *Bata Shoe Company, Ltd.* v. *Ali Hasan (Industrial Tribunal, Patna & Ors.)* (3) transfer of an employee in the circumstances of that case from one post to another was held not to be an alteration of any service condition within the meaning of s. 33 of the Industrial Disputes Act. That was a case of a management employing a worker in one concern and transferring him from one post to

(2) [1956] I.L.L.J. 343. (3) [1956] I L.L.J. 278.

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another. In such a case it was possible to imply the condition of right of the management to transfer the employee from one post to another. *S. N. Mukherjee* v. *Kemp & Co. Ltd.* (4) was a case arising out of s. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950. The complaint there was that an employee was transferred by the management with a view to victimize him and that it amounted to alteration in the conditions of employment. It was held that if an employer employed a person it was implicit in the appointment that he could be transferred to any place where the business of the employer in the same line was situated, unless there was an express condition to the contrary in the contract of employment. In that case the worker was employed by Kemp & Co., Limited, which had branches in different places. The decision assumed that the business was one unit and that the only question raised was that he should not be transferred to a place different from the place where he was actually discharging his duties. These observations must be limited to the facts of that case.

It is not necessary to multiply the citation, for the other decisions relied on by the learned counsel for the appellant pursue the same reasoning followed in the aforesaid cases.

We have referred to the decisions only to distinguish them from the present case, and not to express our opinion as to the correctness of the decisions therein. It would be enough to point out that in all the said decisions the workers had been employed in a business or a concern and the question that arose was whether in the circumstances of each case the transfer from one branch to another was valid or amounted to victimization. None of these decisions deals with a case similar to that presented in this appeal, namely, whether a person employed in a factory can be transferred to some other independent concern started by the same employer at a stage subsequent to the date of his employment. None of these cases holds, as it is suggested by the learned counsel for the appellant, that every employer has the inherent right to transfer his employee to another place where he chooses to start

(4) [1954] L.A.C. 903

a business subsequent to the date of the employment. We, therefore, hold that it was not a condition of service of employment of the respondents either express or implied that the employer has the right to transfer them to a new concern stared by him subsequent to the date of their employment.

The respondents also relied upon a Government Order No. 6122 (ST)/XXXVI-A-640(S)-T-1953 in support of their contention that the order of transfer was bad. By this Order the Government of U. P. had directed that the employment of seasonal workmen in all vacuum pan sugar factories in the Uttar Pradesh should be governed by the rules contained in the annexure thereto. Rule 1 in the said annexure is to the following effect:

> "A worker who has worked or but for illness or any other unavoidable cause would have worked in a factory during the whole of the second half of the last preceding season will be employed in this season in such factory."

This rule has no relevancy to the question raised in the present case. This rule only enjoins upon an employer to employ a worker in the circumstances mentioned therein in the same factory in which he was working in the previous season during the next season also. This does not prevent the employer to transfer an employee if he has the right to do so under the contract of service or under any statutory provisions. We have already held that the employer in the present case has no such right.

Lastly it is said that the Appellate Tribunal had no jurisdiction to set aside the finding of the State Industrial Tribunal, as it did not give rise to any substantial question of law within the meaning of s. 7(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950. The question raised was one of law, namely, whether the appellant had the right to transfer the respondents 1 to 4 from one concern to another. A substantial question of law involved between the parties and that raised also an important principle governing the right of an employer to transfer his employees from one concern to another of his in the circumstances of this case. We, therefore, hold that

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a substantial question of law arose in the case and that it was well within the powers of the Labour Appellate Tribunal to entertain the appeal.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

S. S. LIGHT RAILWAY CO., LTD.

v.

UPPER DOAB SUGAR MILLS LTD. & ANOTHER

(P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. C. DAS GUPTA, JJ).

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Railway Rates—Terminal charges fixed by Government—When leviable—Railway Rates Tribunal—Jurisdiction of—Indian Railways Act, 1890 (IX of 1890). ss, 3 (14) 32 and 41.

In pursuance of s. 32 of the Indian Railways Act, 1890 (IX of 1890), the Central Government had by means of a notification, fixed certain rates of terminal charges for loading and unloading goods carried from one station to another by Railway. Inspite of this notification the appellant Railway Company did not levy any terminal charges in accordance with those rates up to a certain point of time and continued to charge at a rate which was then prevalent and in which no terminal charges were included. Subsequently, however, the Railway Company issued a Local Rates Advice by which terminal charges were added to the prevalent rates with the result that the total charges payable to the Railway by the respondent mills rose considerably. It was for relief against this increase that the mills made a complaint under s. 41 (1) (i) of the Indian Railways Act to Railway Rates Tribunal. The contention of the Railway Company, inter alia, was that as in increasing the charges the Administration had merely applied standardised terminal charges as notified by the Central Government no complaint could be made in respect thereof under s. 41 (1) (i). The Tribunal by a majority held that this was not a case of application of a standardised terminal charge and so it had jurisdiction to consider the question, and they ordered a reduction of terminal charges from the total charges. On appeal by the Railway,

Held, that the Railway Rates Tribunal had no jurisdiction either to investigate the reasonableness or otherwise of terminal charges levied by the Railway or to reduce the same. The charges sought to be levied by the Railway Administration were "terminal charges" within the meaning of the