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Tea Districts
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based on mere surmises and is entirely opposed to the weight of evidence adduced in this case.

The result is that that portion of the award which issues directions to the appellant on the basis that the closure, in the eyes of law, had not taken place is set aside. The appeal succeeds to that extent and must be allowed. There will be no order as to costs in the circumstances.

Appeal allowed.

MANAGEMENT OF VISHNU SUGAR MILLS
LIMITED, HARKHUA, DISTRICT
SARAN, BIHAR

v.

THEIR WORKMEN REPRESENTED BY CHINI
MILL MAZDOOR UNION, HARKHUA, DIST.
SARAN, BIHAR

1960

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March 9.

(P. B. GAJENDRAGADKAR AND K. N. WANCHOO, JJ.)

Industrial Dispute—Reference by State Government—Competence—Controlled industry—“Appropriate Government,” meaning of—Industries (Development and Regulation) Act, 1951 (65 of 1951).—Industrial Disputes Act, 1947 (14 of 1947), s. 2 (a) (i).

A dispute relating to a workman in the appellant sugar mill, situate in Bihar, was raised by the Workers Union and a reference was made by the State Government. Under s. 2 (a) (i) of the Industrial Disputes Act, 1947, “‘Appropriate Government’ means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government.....or concerning any such controlled industry as may be specified in this behalf by the Central Government.....the Central Government”. The question was whether the State Government was competent to make the reference, as sugar was a controlled industry under the Industries (Development and Regulation) Act, 1951.

Held, that in order that the appropriate government under s. 2 (a) (i) of the Industrial Disputes Act, 1947, may be the Central Government for a controlled industry it is necessary that such controlled industry should be specified by the Central Government, and that in the absence of a notification for the

purposes of s. 2 (a) (i) of the Act, the State Government was competent to make the reference.

The Bijoy Cotton Mills Ltd. v. Their Workmen and Another [1960] 2 S.C.R. 982, followed.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 402 of 1958.

Appeal by special leave from the Award dated January 29, 1957, of the Industrial Tribunal, Bihar, at Patna in Reference No. 7 of 1956.

Sukumar Ghose, for the appellant.

M. K. Ramamurthi, R. K. Garg, A. N. Nag and Suresh Aggarwal, for the respondents.

S. P. Varma, for the intervener (State of Bihar).

1960. March 9. The Judgment of the Court was delivered by

WANCHOO, J.—This is an appeal by special leave against the award of the Industrial Tribunal, Patna. The appellant is a Sugar Mill in District Saran in the State of Bihar. One Ramkrishna Prasad was appointed as clerk in this mill in 1933. Gradually, he worked his way up and was drawing Rs. 140 per month in October 1952. The mill created a new post of store in-charge about that time as the work in the Stores Department of the Mill had increased. On October 4, 1952, Babulal Parekh was appointed to this new post on a consolidated salary of Rs. 180 per mensem. A letter of appointment was issued to him on that date and he was told that he would be on probation for one year. He was also asked by another letter to take charge immediately. He took charge on October 7, 1952. On November 28, 1952, an order was passed by the mill distributing the duties between the various clerks employed in the Stores Department and it was stated therein that all the staff of the Stores Department would work as subordinate to Babulal Parekh. On December 2, 1952, another order was passed by which Ramkrishna Prasad was ordered to hand over the keys of the stores to Babulal Parekh. Thereafter Ramkrishna Prasad made a representation against his being made subordinate to the stores in-charge. This representation was rejected. A dispute was then raised by the union and a reference was made by the Government of Bihar on May 9, 1956, in which the

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following three matters were referred to the tribunal :—

1. Whether the status of workman, Sri Ramkrishna Prasad, Store-keeper, and the nature of the job performed by him has been changed to his prejudice with the appointment of a separate store in-charge;

2. Whether in view of the satisfactory performance of duties of store-keeper for the last 20 years by the above-named workman, it was at all necessary to appoint a separate store in-charge over him with higher emoluments and whether Shri Ramkrishna Prasad is entitled to be appointed to the post of store in-charge; and

3. Whether the claim of the above-named workman for promotion to higher grades has been overlooked by the management, and if so, what relief the workman is entitled to.

When the matter came up before the tribunal, the main contention on behalf of the mill was that it was exclusively the management function to decide its labour strength, both qualitatively and quantitatively, and that so far as Ramkrishna Prasad was concerned his position had not been prejudicially affected by the creation of the new post of a store in-charge. The workmen on the other hand contended that Babulal Parekh was first appointed as a mere clerk under Ramkrishna Prasad to begin with and it was only on November 28, 1952, that he was promoted over the head of Ramkrishna Prasad as a store in-charge, thus superseding Ramkrishna Prasad. This stand of the workmen was controverted by the mill and its case was that Babulal Parekh was from the very beginning appointed as store in-charge.

The tribunal came to the conclusion after a consideration of the evidence produced that Babulal was first appointed as an ordinary clerk in the Stores Department and was subsequently made a store in-charge. It held that this caused reasonable heart burning to Ramkrishna Prasad. The tribunal was conscious of the principle that promotion to a higher post was the exclusive function of the management and should not ordinarily be interfered with. But

in spite of that it was of the view that this was a fit case for interference; but on other considerations which were not specified in the order by the tribunal it held that it would not interfere with the arrangement made by the mill; it instead granted an increment of Rs. 30 per month from the date of its order to Ramkrishna Prasad to meet the ends of justice. It is this order which is being challenged before us.

Two points have been urged before us on behalf of the appellant. In the first place it is urged that the reference was incompetent as sugar was a controlled industry and only the Central Government could have made the reference and not the State Government. Secondly, it is urged that the order of the tribunal granting an increment of Rs. 30 per month to Ramkrishna Prasad was patently perverse and that there was no change in the status or emoluments of Ramkrishna Prasad by the creation of the new post and the employment of Babulal Parekh on it.

So far as the question of the competence of the reference is concerned, we are of opinion that there is no force in it. A similar question was raised before this Court in *The Bijoy Cotton Mills Ltd. v. Their Workmen and Another* ⁽¹⁾ and it was held there on the language of s. 2(a)(i) of the Industrial Disputes Act, 1947, that before that provision could apply to a controlled industry there must be a notification by the Central Government for the purposes of s. 2(a)(i) of the Industrial Disputes Act. Section 2(a)(i) is in these terms—

“ ‘Appropriate Government’ means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government, or in relation to an industrial dispute concerning a banking or an insurance company, a mine, an oil-field or a major port, the Central Government. ”

The argument is that as sugar is a controlled industry under the Schedule to the Industries (Development and Regulation) Act, No. 65 of 1951, the appropriate

(1) [1960] 2 S.C.R. 982.

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Government for the purposes of s. 2(a)(i) with reference to the sugar Industry is the Central Government. Reliance is placed on the words "concerning any such controlled industry as may be specified in this behalf by the Central Government" appearing in s. 2(a)(i). It is true that sugar is a controlled industry under the Industries (Development and Regulation) Act, 1951, but that in our opinion does not conclude the matter. In order that the appropriate government under s. 2(a)(i) may be the Central Government for a controlled industry, it is necessary that such controlled industry should be specified by the Central Government for the purposes of s. 2(a)(i). This in our opinion is obvious from the words "controlled industry as may be specified in this behalf by the Central Government" appearing in s. 2(a)(i). It is not enough that an industry should be a controlled industry to attract this provision of s. 2(a)(i); it is further necessary that it should be specified in this behalf, namely for the purposes of s. 2(a)(i), as a controlled industry by the Central Government, before the Central Government can become the appropriate government within the meaning of s. 2(a)(i). We may in this connection refer to *Firebricks and Potteries Ltd., etc. v. Firebricks and Potteries Ltd. Workers Union Ltd.* (1) where the same view has been taken. We are of opinion that that is the correct meaning of these words appearing in s. 2(a)(i), as already held in *The Bijoy Cotton Mills Ltd.* (2). The objection that the reference was not competent therefore fails.

We next come to the contention raised on behalf of the mill that there was in fact no prejudice whatsoever so far as the status and emoluments of Ramkrishna Prasad were concerned by the creation of the new post and the appointment of Babulal Parekh on it, and that the tribunal was not justified in any case in granting an increment of Rs. 30 per mensem to Ramkrishna Prasad. The main consideration which influenced the tribunal in passing the order which it did was that in the view of the tribunal Ramkrishna Prasad was superseded by Babulal Parekh who was first appointed as a clerk under him. This view of

(1) I.L.R. [1955] Mys. 546.

(2) [1960] 2 S.C.R. 982.

the tribunal in our opinion is patently erroneous. The appointment order dated October 4, 1952, clearly shows that Babulal Parekh was appointed as store in-charge from the very beginning at Rs. 180 per month. The tribunal referred to certain entries in the attendance register to hold that Babulal Parekh worked as clerk to begin with. It appears from the attendance register for the months of October, November and December that Babulal Parekh was marked present from October 7 to November 9. Thereafter from November 11 to the end of December he signed the attendance register. The statement of Chaudhari, Labour Welfare Officer, of the mill was that the practice in the mill was that officers used to be marked present in the attendance register while clerks used to sign it themselves. The tribunal has concluded from the fact that Babulal Parekh signed the register in November that he must have been a clerk to begin with. The tribunal, however, completely overlooked that from October 7 to November 9, Babulal Parekh was marked present which would show that he was not a clerk. The tribunal also overlooked that even from November 28 to the end of December when Babulal Parekh admittedly was not a clerk but store in-charge he still signed the register, though he should have been marked present. Chaudhari was unable to explain how this happened, but he was hardly the person to explain this. It is, however, clear from this confusion that no importance can be attached to whether Babulal Parekh was marked present in the register or signed it. The real thing which determined the status of Babulal Parekh was the appointment order dated October 4, 1952, which the tribunal has accepted as correct. A question was certainly put to Chaudhari at the end of his cross-examination that he had manufactured the statements put in by him only the night before but he denied it. We cannot accept the suggestion on behalf of the respondents that the appointment order was ante-dated, for no such suggestion was made to Chaudhari and the tribunal itself does not find so. It is clear therefore that the finding of the tribunal that Babulal Parekh was appointed as

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clerk under Ramkrishna Prasad to begin with is patently perverse and it must be held that Babulal Parekh was from the very beginning working as store in-charge. Now in so far as Ramkrishna Prasad was concerned his work and emoluments remained the same after the appointment of Babulal Parekh. If a higher post was created in the Stores Department because of the increase in work, Ramkrishna Prasad could not claim promotion to it merely because he was working as a store-keeper before. There is of course no question of supersession in this case and therefore there is no reasonable cause for any heart burning. As the learned tribunal itself points out, "promotion to higher post was the exclusive function of the management" and if a new post is created and a new man appointed, as in this case, it cannot be said that Ramkrishna Prasad's status was in any way prejudicially affected. It is also remarkable that after saying all that it could in favour of Ramkrishna Prasad the tribunal did not interfere with the arrangement made by the mill for reasons which were not specified by it in the order. As such there was no reason for granting an increment of Rs. 30 per mensem to Ramkrishna Prasad, for even the workmen did not claim that he was entitled to any compensation in the shape of an increment in his pay because of the appointment of Babulal Parekh. The order of the tribunal therefore is patently unsupportable and must be set aside. We therefore allow the appeal and set aside the order of the tribunal and hold that no relief is due to Ramkrishna Prasad. In the circumstances we pass no order as to costs.

Appeal allowed.
