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*Bharatkhand Textile Mfg. Co. Ltd.*
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*Gajendragadkar J.*

wage for each completed year of service for the period before the coming into force of the Employees' Provident Funds Act, 1952, and half-a-month's basic wage for each completed year of service thereafter, subject to a maximum of fifteen months' basic wages to be paid to the employee or his heirs or executors or nominees as the case may be. This provision which amounts to a departure from the Bombay scheme of gratuity brings out the fact that the provisions made by the Employees' Provident Funds Act have been duly taken into account by the industrial court. We are, therefore, satisfied that the scheme framed by the industrial court does not suffer from any infirmities as alleged by the appellants.

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

*Appeal dismissed.*

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M/S. NEW INDIA MOTORS (P) LTD. NEW DELHI

*v.*

K. T. MORRIS

1960

*March 22.*

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

*Industrial Dispute—"Workmen concerned in such dispute," Meaning of—Industrial Disputes Act, 1947 (14 of 1947), as amended by Act 36 of 1956, ss. 33(1)(a), 33A.*

The respondent workman was dismissed by his employer, the appellant, pending adjudication of an industrial dispute, and without the permission of the Industrial Tribunal, relating to the discharge of 7 other employees working as apprentices under the appellant. The respondent raised a dispute before the Industrial Tribunal under s. 33A of the Industrial Disputes Act, 1947, and his case was that he was concerned in the dispute relating to the said 7 employees and gave evidence on their behalf and that his dismissal was solely due to the interest he took in their cause. The Tribunal found in his favour and passed an award directing his reinstatement. The appellant contended that the respondent was incompetent to raise the dispute under s. 33A of the Act. The question for decision, therefore, was one relating to the construction of s. 33(1)(a) of the Act;

*Held*, that the expression "workmen concerned in such dispute" occurring in s. 33(1)(a) of the Industrial Disputes Act, 1947, as amended by Act 36 of 1956, includes not merely such workmen as are directly or immediately concerned with the dispute, but also those on whose behalf the dispute is raised as well as those who, when the award is made, will be bound by it.

*Eastern Plywood Mfg. Co. Ltd.* v. *Eastern Plywood Mfg. Workers' Union*, (1952) L.A.C. 103 and *Newtone Studios Ltd.* v. *Ethirajula (T.R.)*, (1958) I L.L.J. 63, approved.

*The New Jehangir Vakil Mills Ltd., Bhavnagar* v. *N. L. Vyas & Others*, A.I.R. 1959 Bom. 248, disapproved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 124 of 1959.

Appeal by special leave from the Award dated February 8, 1957, of the Additional Industrial Tribunal, Delhi, in Misc. I. D. Case No. 422 of 1956.

*Jawala Prasad Chopra* and *J. K. Haranandani*, for the appellants.

*C. K. Daphtary, Solicitor-General of India, H. J. Umrigar, M. K. Ramamurthi, V. A. Seyid Muhamad* and *M. R. Krishna Pillai*, for the respondent.

1960. March 22. The Judgment of the Court was delivered by

*Gajendragadkar J.*

GAJENDRAGADKAR, J.—This appeal by special leave is directed against the order passed by the Additional Industrial Tribunal, Delhi, directing the appellant, M/s. New India Motors Private Ltd., to reinstate its former employee, K. T. Morris, the respondent, in his original post as field service representative and to pay him his back wages from the date of his dismissal till the date of his reinstatement. This award has been made on a complaint filed by the respondent against the appellant under s. 33A of the Industrial Disputes Act XIV of 1947 (hereinafter called the Act). It appears that before joining the appellant the respondent was working with a firm in Calcutta; prior to that he was field service representative of M/s. Premier Automobiles Ltd., Bombay. The respondent joined the services of the appellant sometime in May 1954 as Works Manager. Before he joined the services of the appellant he had been told by the appellant by its letter dated March 27, 1954, that the appellant would be willing to pay him Rs. 350 per month and something more by way of certain percentage on business. He was, however, asked to interview the

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appellant; an interview followed and the respondent was given a letter of appointment on May 6, 1954. By this letter he was appointed as Workshop Manager in the appellant's firm on three months' probation subject to the terms and conditions specified in the letter of appointment (Ex. W-2). The respondent continued in this post till February 28, 1955, when he was given the assignment of the appellant's field service organiser with effect from March 1, 1955. A letter of appointment given to him on 28 - 2 - 1955 set forth the terms and conditions of his new assignment. It appears that on April 18, 1956, the management of the appellant called for an explanation of the respondent in respect of several complaints. An explanation was given by the respondent. It was, however, followed by another communication from the appellant to the respondent setting forth specific instances of the respondent's conduct for which explanation was demanded. The respondent again explained and disputed the correctness of the charges. On June 30, 1956, the respondent's services were terminated on the ground that the appellant had decided to abolish the post of field service representative. It is this order which gave rise to the respondent's complaint under s. 33A of the Act. The complaint was filed on July 18, 1956. The respondent invoked s. 33A because his case was that at the time when his services were terminated an industrial dispute was pending between the appellant and 7 of its employees and the respondent was one of the workmen concerned in the said industrial dispute. The said industrial dispute had reference to the termination of the services of the said 7 employees who were working with the appellant as apprentices. On their behalf it was alleged that their termination of service was improper and illegal and that was referred to the industrial tribunal for its adjudication on August 20, 1955. The said dispute was finally decided on January 2, 1957. With the merits of the said dispute or the decision thereof we are not concerned in the present appeal. According to the respondent, since he was a workman concerned in the said dispute s. 33(1)(a) applied and it was not open to the appellant to terminate his

services save with the express permission in writing of the authority before which the said dispute was pending. It was on this basis that he made his complaint under s. 33A of the Act.

Before the tribunal the appellant urged that the respondent was not a workman as defined by the Act, and on the merits it was contended that the appellant had to abolish the post of the field service organiser owing to the fact that a part of the agency work of the appellant had been lost to it. On the other hand, the respondent contended that he was a workman under the Act and the plea made by the appellant about the necessity to abolish his post was not true and genuine. His grievance was that his services were terminated solely because he had taken interest in the complaint of the 7 apprentices which had given rise to the main industrial dispute and had in fact given evidence in the said dispute on behalf of the said apprentices. The tribunal has found that the respondent is a workman under the Act, that there was no evidence to justify the appellant's contention that it had become necessary for it to abolish the respondent's post, and that it did appear that the respondent had been discharged because the appellant disapproved of the respondent's conduct in supporting the 7 apprentices in the main industrial dispute. As a result of these findings the tribunal has ordered the appellant to reinstate the respondent.

The question as to whether the respondent is a workman as defined by s. 2(s) of the Act is a question of fact and the finding recorded by the tribunal on the said question, after considering the relevant evidence adduced by the parties, cannot be successfully challenged before us in the present appeal. The respondent has given evidence as to the nature of the work he was required to do as field service organiser. The letter of appointment issued to him in that behalf expressly required, inter alia, that the respondent had, if need be, to check up and carry out necessary adjustments and repairs of the vehicles sold by the appellant to its customers and to obtain signatures of responsible persons on the satisfaction

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forms which had been provided to him. The respondent swore that he looked after the working of the workshop and assisted the mechanics and others in their jobs. He attended to complicated work himself and made the workmen acquainted with Miller's special tools and equipment needed for repairs and servicing of cars. He denied the suggestion that he was a member of the supervisory staff. On this evidence the tribunal has based its finding that the respondent was a workman under s. 2(s), and we see no reason to interfere with it.

Then, as to the appellant's case that it had to abolish the post of the respondent as it had lost the agency of DeSoto cars from Premier Automobiles, there is no reliable evidence to show when this agency was actually lost. Besides, the fact that the appellant has appointed a Technical Supervisor after discharging the respondent is also not without significance. Furthermore, the appellant is still the agent for Plymouth and Jeeps and the tribunal is right when it has found that it still needed a field representative to look after servicing of sold cars at outside stations. On the other hand, the evidence of the respondent clearly shows that he supported the case of the 7 apprentices and that provoked the appellant to take the step of terminating his services. The process of finding fault with his work appears to have commenced after the appellant disapproved of the respondent's conduct in that behalf. We are, therefore, satisfied that the tribunal was right in coming to the conclusion that the dismissal of the respondent is not supported on any reasonable ground, and in fact is due to the appellant's indignation at the conduct of the respondent in the main industrial dispute between the appellant and its 7 employees. If that be the true position the industrial tribunal was justified in treating the dismissal of the respondent as *mala fide*.

It has, however, been urged before us by the appellant that the complaint made by the respondent under s. 33A is not competent. It is common ground that a complaint can be made under s. 33A only if s. 33 has been contravened, and so the appellant's argument is that s. 33(1)(a) is inapplicable because the respondent

was not a workman concerned in the main industrial dispute, and as such his dismissal cannot be said to contravene the provisions of the said section. Indeed the principal point urged before us by the appellant is in regard to the construction of s. 33(1)(a) of the Act. Was the respondent a workman concerned with the main industrial dispute? That is the point of law raised for our decision and its decision depends upon the construction of the relevant words used in s. 33(1)(a).

Section 33(1)(a) as it stood prior to the amendment of 1956 provided, inter alia, that during the pendency of any proceedings before a tribunal, no employer shall alter to the prejudice of the workmen concerned in the said dispute the conditions of service applicable to them immediately before the commencement of the said proceedings, save with the express permission in writing of the tribunal. Section 33 has been modified from time to time and its scope has been finally limited by the amendment made by Act 36 of 1956. With the said amendments we are, however, not concerned. The expression "the workmen concerned in such dispute" which occurred in the earlier section has not been modified and the construction which we would place upon the said expression under the unamended section would govern the construction of the said expression even in the amended section. What does the expression "workmen concerned in such dispute" mean? The appellant contends that the main dispute was in regard to the discharge of 7 apprentices employed by the appellant, and it is only the said 7 apprentices who were concerned in the said dispute. The respondent was not concerned in the said dispute, and so the termination of his services cannot attract the provisions of s. 33(1)(a). Prima facie the argument that "workmen concerned in such dispute" should be limited to the workmen directly or actually concerned in such dispute appears plausible, but if we examine the scheme of the Act and the effect of its material and relevant provisions this limited construction of the clause in question cannot be accepted.

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Let us first consider the definition of the industrial dispute prescribed by s. 2(k). It means, inter alia, any dispute or difference between employers and workmen which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person. It is well-settled that before any dispute between the employer and his employee or employees can be said to be an industrial dispute under the Act it must be sponsored by a number of workmen or by a union representing them. It is not necessary that the number of workmen of the union that sponsors the dispute should represent the majority of workmen. Even so, an individual dispute cannot become an industrial dispute at the instance of the aggrieved individual himself. It must be a dispute between the employer on the one hand and his employees acting collectively on the other. This essential nature of an industrial dispute must be borne in mind in interpreting the material clause in s. 33(1)(a).

Section 18 of the Act is also relevant for this purpose. It deals with persons on whom awards are binding. Section 18(3) provides, inter alia, that an award of a tribunal which has become enforceable shall be binding on (a) all parties to the industrial dispute, (b) all other parties summoned to appear in the proceedings as parties to the dispute unless the tribunal records the opinion that they were so summoned without proper cause, and (c) where a party referred to in cl. (a) or cl. (b) is composed of workmen all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part. It is thus clear that the award passed in an industrial dispute raised even by a minority union binds not only the parties to the dispute but all employees in the establishment or part of the establishment, as the case may be, at the date of the dispute and even those who may join the establishment or part subsequently. Thus the circle of persons bound by the award is very much wider than the parties to the industrial dispute. This aspect of the

matter is also relevant in construing the material words in s. 33(1)(a).

In this connection the object of s. 33 must also be borne in mind. It is plain that by enacting s. 33 the Legislature wanted to ensure a fair and satisfactory enquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for disharmony between them. During the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. That being the object of s. 33 the narrow construction of the material words used in s. 33(1)(a) would tend to defeat the said object. If it is held that the workmen concerned in the dispute are only those who are directly or immediately concerned with the dispute it would leave liberty to the employer to alter the terms and conditions of the remaining workmen and that would inevitably introduce further complications which it is intended to avoid. Similarly it would leave liberty to the other employees to raise disputes and that again is not desirable. That is why the main object underlying s. 33 is inconsistent with the narrow construction sought to be placed by the appellant on the material words used in s. 33(1)(a).

Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such disputes must be workmen directly or immediately concerned in the said disputes. We do not see any justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out this construction is harmonious with the definition prescribed by s. 2(s) and with the provisions contained in s. 18 of the Act. Therefore,

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we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute.

It appears that the construction of the relevant clause had given rise to a divergence of opinion in industrial courts, but it may be stated that on the whole the consensus of opinion appears to be in favour of the construction which we are putting on the said clause. In *Eastern Plywood Manufacturing Co. Ltd.* v. *Eastern Plywood Manufacturing Workers' Union* (1) the appellate tribunal has referred to the said conflict of views and has held that the narrow construction of the clause is not justified. The High Court of Madras appears to have taken the same view (Vide: *Newtone Studios Ltd.* v. *Ethirajulu (T.R.)* (2)). On the other hand, in *The New Jehangir Vakil Mills Ltd., Bhavnagar* v. *N. L. Vyas & Ors.* (3), the Bombay High Court has adopted the narrow construction; but for reasons which we have already explained we must hold that the Bombay view is not justified on a fair and reasonable construction of the relevant clause.

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

*Appeal dismissed.*

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## THE CHAIRMAN OF THE BANKURA MUNICIPALITY

*v.*

## LALJI RAJA AND SONS.

1960

March 23.

(K. C. DAS GUPTA and J. C. SHAH, JJ.)

*Municipality—Unwholesome food—Seized under warrant—If can be directed to be destroyed—Bengal Municipal Act, 1932 (Ben. Act. XV of 1932), ss. 430, 431(2).*

The respondents were the owners of an oil seed pressing factory situated within the limit of a municipality. They used to import mustard seeds from different areas and they also held a

(1) (1952) L.A.C. 103. (2) (1958) I L.L.J. 63. (3) A.I.R. 1959 Bom. 248.