Simbhaoli Industries Private Ltd., Meerut Vs. State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Aug-06-1958

Reported in : AIR1959All369; (1959)ILLJ227All

Judge : J.K. Tandon, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 4K, 5B and 11A; Constitution of India - Article 226

Appeal No. : Civil Misc. Writ No. 3524 of 1957

Appellant : Simbhaoli Industries Private Ltd., Meerut

Respondent : State of Uttar Pradesh and ors.

Advocate for Def. : Standing Counsel and ;R.C. Verma, Adv.

Advocate for Pet/Ap. : Gyanendra Kumar, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

J.K. Tandon, J.

1. These two petitions are by Messrs. Shimbhaoli Industries Private Limited, Simbhaoli, district Meerut. Petition No. 3524 of 1957 arise out of an arbitration award made upon a reference under Section 5-B of the United Provinces Industrial Disputes Act, 1947, wherefor an industrial dispute concerning three persons, who were Khurshed Ali, Ram Swamp and Lal Singh on the one hand and petitioner on the other, was referred to the arbitration of one Sri Khannu who is the Presiding officer of the Labour Court at Meerut. The other writ petition No. 3525 of 1957 arises out of a dispute referred under Section 4-K of the same Act under an order dated 28th August 1957 passed by the Deputy Labour Commissioner, U. P.

This related to the employment of one Sri Kripal Singh as Stillman in the above factory. Since some of the questions raised in the dispute referred under Section 5-B were similar to these arising in the reference under Section 4-K, Sri Khanna decided both the matters simultaneously by his order dated 5th October 1957 which in due course was published by the Government in accordance with the provisions of the U. P. Industrial Disputes Act, 1947. There is no dispute that the subsequent action taken by the Government on the decision by Sri Khanna was in accordance with law. Under

the circumstances it is not necessary to refer to the steps taken in that behalf by the Government.

2. In order to appreciate the controversy more-fully, it is necessary to state certain facts. The petitioner company deals in the manufacture of alcohol. In the process of manufacture it is necessary to employ Still-men and Firemen. The duties of Stillman and Fireman are respectively to look after the distillation unit and the operation of the boiler. The petitioner has in the case of the fireman not admitted that the fireman's duties include attendance on the boiler, on the other hand, according to him, a Fireman has to look after the fire and fire-box and dampers and cleaning of lamp etc.

The rest of the work connected with the operation of the boiler is, according to him, the duty of the boiler attendant. This aspect, however, does not seem to be material in this case as shall be pointed out in due course. Formerly there used to be two designations in each case, stillman and assistant stillman, and fireman and assistant fireman, respectively. There were in the past three stillmen who were Badan Singh, Rajendra Prasad and Anup Singh and three Assistant Stillmen who were Kripal Singh, Khurshed Ali and Nathu Ram.

Similarly there used to be Bakshi Ram and Puran Singh as firemen and Ram Swarup and Lal Singh as assistant firemen. In course of time Badan Singh and Rajendra Prasad stillmen left their jobs. The reason for their leaving is not necessary here. Kripal Singh and Khurshed Ali were appointed to carry out the duties that used to be performed by them. Likewise Ram Swarup and Lal Singh were appointed to carry out the duties of fireman. The pay admissible to a stillman is higher than that admissible to an assistant stillman. In the same way, there is difference in the emolument of a fireman, and an assistant fireman.

The leave rules applicable to them also are different. In the case of a fireman the amount of leave admissible is larger than in the case of an assistant fireman. Similar is the case with respect to stillman and assistant stillman. It appeared that once Kripal Singh and Khurshed Ali and similarly Ram Swarup and Lal Singh had been put on the duties of a stillman and fireman resportively. They expected the employers to extend to them the emoluments and advantages belonging to the post of stillman and fireman respectively.

But in August 1956 the employers introduced in the case of stillman two new grades under the designation of senior stillman and junior stillman. Anup Singh who was a stillman in the past was then designated as senior stillman but Kripal Singh and Khurshed Ali, though they were working in the vacancies created by the removal of the other two stillmen, were designated as junior stillmen. The condition of service of junior stillman, as settled by the employers, did not entitle these persons to the higher emoluments belonging to the post of still-man and now, since the change in the designation, to the post of senior stillman.

These persons nevertheless claimed that they were doing the work of a stillman, and as such were entitled to all these privileges and blamed the employers for withholding them by this method. Ram Swarup and Lal Singh also claimed that since they were working as firemen they were entitled to the salary etc. payable to a fireman. Here it may be stated that the change of designation in August 1956 from stillman to senior stillman and junior still-man was done by the factory after approval

by the Factory Inspector.

The petitioners have made a ground for this reason that the employees had no right to interfere or object to this change which, in the first instance was a matter of internal management which was in their exclusive discretion and clearly that sanction had been obtained from the Factory Inspector. I shall revert to this matter later also.

3. In due course, these disputes were referred to Sri Khanna in the manner already referred ,to above. Here, it may be necessary to refer to the notification by which the reference was made to the labour court under Section 4-K. The dispute referred was as follows :

'Should the employers be required to designate Sri Kripal Singh as stillman and allow him the facilities and amenities of the post? If so, with what details ?'

4. The dispute referred through arbitration agreement under Section 5-B, which concerned Ram Swarup, Lal Singh and Khurshed Ali, was, one, whether Ram Swarup and Lal Singh should be designated as fireman and paid for accordingly, and two whether Khurshed Ali should be designated as stillman and paid for accordingly. In each of these cases, the dispute referred thus, included the question about designation also to be given to each of these four persons besides the salary etc. to be paid to them.

The award pronounced by Sri Khanna held, in the case of Khurshed Ali and Kripal Singh, that they should be designated as stillman and also paid the salary at the rate of Rs. 80. 12 nP. With regard to Ram Swarup and Lal Singh he held that they, too, should be designated as fireman and paid for accordingly. These orders have been given effect to by the State Government under the U. P. Industrial Disputes Act 1947. The present petitions are directed against these orders.

5. One of the grounds common to both the petitions is that there was no dispute in existence at the time when the alleged references were made. Consequently Sri Khanna had no jurisdiction to enter upon the reference, hence his award is bad and illegal and without jurisdiction. The next ground is that an employer is free to introduce new grades in his discretion and no employee, as of right, can demand that he shall be given any particular designation.

The third ground, which follows a corollary from the second ground aforesaid, is that Sri Kha-nna's order, in so far as it has directed the designations of stillman and fireman to be given to the respective persons, was in any event beyond his jurisdiction. The fourth ground which arises in the case of Kripal Singh in writ petition No. 3525 of 1957 is thus : Section 4-K, under which the reference was made conferred power on the State Government to make the reference, but the reference was made by the Deputy Labour Commissioner under the purported delegation of power made in his favour under Section 11-A of the Act.

The petitioner's contention in this connection is that so far as the requirement in Section 4-K about the forming of an opinion as to the existence of an industrial dispute is concerned there could be no delegation to any authority or officer under Section 11-A and as admittedly no action in that behalf had been taken in this case by the State Government, on the contrary, the Deputy Labour Commissioner alone had done so, the order of reference was in excess of his authority.

6. As regards the plea that no industrial disputes in fact existed it need only be pointed out that it was a matter which was within the exclusive jurisdiction of the referring authority to determine, The existence or not of a dispute or the forming of an opinion as to its existence is an administrative act and, ordinarily, it is outside the purview of our scrutiny to see for ourselves whether an industrial dispute existed or not. However, there is ample material in these cases to show, as a fact, that industrial disputes did exist.

In writ Petition No. 3524 reference had been made under Section 5-B of the Industrial Disputes Act. The Arbitration agreement, which is Annexure E of the counter affidavit, filed on behalf of the respondents and which has been executed by the petitioners and the Secretary and members of the Executive Committee of the relative Union has mentioned the matters in dispute. These were quoted earlier in this order.

7. This agreement does not only state that an industrial dispute existed but mentions the dispute itself too.

8. In writ petition No. 3525 of 1957 the dispute, as we know, arose in connection with Kripal Singh's appointment as Junior stillman. The reference under Section 4-K of the Act was made in August 1957. There are at least three documents, annexures B to D part of the counter-affidavit in writ petition No. 3524, which were letters addressed by Kripal Singh to the Manager of the petitioner Company requesting that he should be deemed permanent stillman from 1-10-52 the date from which he started working on that post and that he should be given the necessary designation pay and other facilities attached to the post.

The earliest of them was sent on 6th June 1955. In the case of these documents the contention that no dispute existed which could be referred under the provisions of the Act is patently untenable. On merits also, therefore, it cannot be successfully urged that there was no industrial dispute in existence which the State Government or the Deputy Labour Commissioner could refer for decision to the proper authority.

9. The petitioner's next contention has been that the designation to be given to any particular post is the exclusive privilege of the employer. No employee can dictate or require the employer to assign any particular designation to his office. I do not think any absolute proposition like this can be laid down. Where the designation attached to any office is directly linked with the conditions of service of an employment pertaining to that office, the designation itself becomes a part and parcel of the terms of employment.

In the present case, it is to be noticed that the position originally was, in one case, that the incumbent was called stillman and, in the other case, fireman. Afterwards two new designations were introduced -- senior stillman and junior stillman. The duties attached to the post of stillman continued to be the same. There is no difference in them in so far as the two new designations have been initiated. The operation in the Mill is continuous and goes on throughout day and night. The stillman, whether he is a junior stillman or a senior stillman done works during the period of a shift ho is on duty. The duties which he has to perform, irrespective of his designation are identical. So far, there-fore, as the nature of the duties and responsibilities of the office are concerned, there is no material difference between these imposed on a junior still-man and these on senior stillman.

The emoluments attached to the two however, materially differ. The junior stillman, though he may be performing the same duties as the senior stillman does and which in the past used to be discharged by a stillman, does not get the emoluments to which a senior stillman is entitled. In fact, he continues, as is the case here, to draw the same salary as he used to get when he was assistant stillman.

It was this grievance which these men placed before the petitioners and which gave rise to the Industrial dispute. The petitioners' suggestion is that the post of junior stillman was a step forward towards the appointment ultimately as senior stillman and the period of duty as junior stillman was thus in the nature of probation and it was open to the petitioner to fix such salary as it considered proper for the probation period.

10. I do not think it is open to the petitioner to ask us in these proceedings to enter into investigation of these questions of fact which are really the concern of the Tribunal concerned. So far as this Court is concerned, it will in these proceedings refrain from making an enquiry, holding the fact one way or the other, unless, as is not the case here, the complaint is that the finding itself was arrived at by the Labour Tribunal without any evidence etc.

11. Apart from this aspect also I do not see any substance in the petitioner's contention that the designation of junior stillman and senior stillman was his absolute concern in this case. These designations undoubtedly carry with them certain conditions of service which affect the term of employment of the persons holding them. It cannot, in these circumstances, be successfully urged that the dispute with regard to the designation was not such as could be referred under the Industrial Disputes Act.

12. Indeed the disputes referred to Sri Khanna in each of the two cases expressly made mention about designation. The judgment of the labour court similarly showed that the parties, too, considered the designations to be a material fact in the ultimate determination of the terms of employment of the persons concerned.

13. I am unable to accept the petitioner's argument also that in the absence of any time-scale or grade provided in the factory to apply to stillman it was not open to the Industrial court to hold that Khurshed Ali and Kripal Singh were entitled to a salary of Rs. 80/2/- per month. Firstly, this was a matter which was within the jurisdiction of the labour court to decide and if it has come to a conclusion, even though the petitioner may consider it to be unfair or incorrect, we cannot alter it under Article 226. Secondly, I find that there is no substance in it otherwise also. The material on the record shows that the starting salary as stillman was Rs. 79/8/- in one case and Rs. 80/2/- in the other. And it was in that context that the labour court assessed the salary to be paid to these men at the rate of Rs. 80/2/- each. The fact also that Anup Singh has served as stillman for a number of years and has earned some increment on that account is again of no avail in view of what has been stated above about the starting salary allowed to other incumbent on this post. This contention also therefore fails.

14. Coming now to the objection regarding the validity of the reference made by the Deputy Labour Commissioner and of the delegation of powers made in his favour under Section 11-A of the Act, it will be worthwhile to reproduce the relevant sections here. Section 4-K reads as follows :

'4-K Reference of dispute to Labour Court of Tribunal where the State Government is of opinion that any industrial dispute exists or is apprehended it may, at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to the dispute to a Labour Court if the matter of industrial dispute is one of these contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication.....'

15. There is a proviso under this section but is not relevant for the present inquiry. Section 11-A is as follows :

'11-A. Delegation of powers. The State Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such condition, if any as may be specified in the direction, be exercisable also by such officer or authority subordinate to the State Government, as may be specified in the notification.'

16. The Deputy Labour Commissioner is undoubtedly an officer subordinate to the State Government. By notification dated 20th May 1957 the State Government, acting under Section 11-A aforesaid, delegated to the Deputy Labour Commissioner the powers exercisable by it under Section 4-K. The Deputy Labour Commissioner in pursuance of the said delegation made the reference dated 28th August, 1957 which is sought to be impugned.

17. The scheme of Section 4-K, as has been noticed, is that where the State Government is of opinion that any industrial dispute exists or is apprehended, it can by a written order refer the dispute to a Labour Court or the Tribunal according to its nature. The State Government has thus the legal ability under this provision to form an opinion that an industrial dispute exists or is apprehended and further, after it has so formed its opinion, to refer the dispute to a court as the case may be. Under Section 11-A the State Government is authorised to direct by notification in the official Gazette that any power exercisable by it under the Act shall be exercised by any officer subordinate to it. The delegation can be absolute or circumscribed by conditions. In the present case, no conditions were imposed; on the other hand, the delegation in favour of the Deputy Labour Commissioner was absolute in nature.

There can be no doubt that in case the ability to act under Section 4-K confer on the State Govt. a 'power' exercisable by that Government within the meaning of Section 11-A, the State Government was competent under the latter section to delegate it. Learned counsel for the petitioner, however, has raised two-fold objections.

In the first place, his contention is that the provision in Section 4-K as respect to opinion is not such as can be said to be a power given to the State Government, secondly that even if it be held to be a power given to it, it is, to use his own language, a subjective provision, so that the duty is imposed on the State Govt. itself which it alone must exercise. It cannot delegate it to any other authority. In other words, the State Government itself could form the opinion; none else but the State Government can perform that particular duty required of it.

18. Neither of the two contentions is, to my mind, tenable. Power means a legal ability, capacity or authority to act. Section 4-K in providing that where the State Government is of opinion that an industrial dispute exists it may refer the dispute to a Labour Court etc, has conferred on the State Govt. a legal ability or authority to make

a reference to a Labour Court. It is thus a power exercisable by the State Government under Section 4-K. The contention also that the Legislature has by providing as aforesaid in Section 4-K conferred power on the precise authority which it alone must always perform, is not borne out by the language of the section.

As pointed out earlier too, the delegation under Section 11-A is not circumscribed by any such restriction so far as Section 4-K is concerned, the Deputy Labour Commissioner has been delegated whatever powers belonged under it to the State Government. The section has no doubt said that the State Government may act in a certain manner if it is of the opinion that an industrial dispute exists or is apprehended, but there is nothing in it or elsewhere in the Act to suggest that the duty to form the opinion has been required to be discharged, in all circumstances, by the State Government alone.

It is not a case of personal skill or any technical knowledge possessed by any individual, may be the performance of any particular duty called for, and which can in appropriate cases justify an interpretation sought to be placed by the learned counsel for the petitioner. But no such considerations exist in the present case. I am consequently of the view that the Deputy Labour Commissioner was fully competent both to form the opinion and to refer the dispute to arbitration etc.

19. I now proceed to examine the petitioner's plea with regard to Lal Singh's and Ram Swarup's claim for appointment as fireman. Rules 2 and 3 of the U. P. Boiler Attendants' Rules, 1956, have provided that after a period of two years from coming into force of the said Rules no person who does not possess a certificate of competency as an attendant granted under them shall be deemed to be a fit and proper person to hold the charge of a boiler. The subsequent rules lay down the conditions under which a certificate of competency shall be granted.

It seems that there is no regular boiler attendant in this factory. It was, however, urged at the time of arguments that one boiler attendant has since been appointed. But in his case too, it is not suggested that a certificate of competency under these rules is held by him. Whatever the position might be with regard to him, it is sufficient for the purposes of this case that no boiler attendant with a certificate of competency attended on the boiler during the period when Ram Swarup and Lal Singh were on duty.

It is not very clear why in spite of the provision in the Rules the necessity of a certificate of Competency has been overlooked; may be, as was suggested by Mr. Kumar that exemption has been applied for. But, as already said above it is sufficient for the present purpose, that no boiler attendant with a certificate of competency is deputed to attend the boiler when these two men are working on it. Now one of the grounds taken against their claim for designation as firemen and entitlements as such was that they held no certificate of competency.

This contention was evidently such as was within the competence of the Labour Court to reject or to accept. Therefore in selecting it, it clearly acted within its jurisdiction. Apart therefore from the fact that it cannot be raised here, this Court will decline to examine it on merits. The position further is that neither of the two men has asked to be designated as boiler attendant. Their claim is for being designated as firemen for which no such certificate is required under these Rules.

20. Referring to the duties of a fireman in this factory it was urged that they included the functions of a boilerman also, so that a certificate will still be required. That is without such a certificate a person cannot claim to be appointed as fireman. It is not possible, in the absence of any material showing what are the duties or functions of a fireman, to conclude that the fireman in this case is a boiler attendant also. Some of the duties belonging to the two posts may be similar in nature, the mere fact therefore that some of them pertained to a boiler attendant also can not per se show that the fireman is a boiler attendant also. Moreover, these were matters for the Labour Court to consider which it actually did. The petitioner cannot benefit by this argument either.

21. These were the only grounds urged in support of the two petitions. But in view of the foregoing discussion they all fail. Consequently bath the petitions are dismissed with costs.

22. The stay orders are discharged.