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Krishan Lal Mehta and anr. Vs. the Industrial Tribunal and ors.

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Court : Delhi

Decided On : Aug-05-1970

Reported in : ILR1970Delhi539

Judge : S.N. Shankar and; S. Rangarajan, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 10A

Appeal No. : Civil Writ Petition No. 917 of 1968

Appellant : Krishan Lal Mehta and anr.

Respondent : The Industrial Tribunal and ors.

Advocate for Pet/Ap. : Madan Mohan and; Lalit Bhasin, Advs

Judgement :

S.N. Shankar, J.

(1) The petitioners in this case, Krishan Lal Mehta and Madan Lal Luthra, employed as assistant Manager and Head Booking; Clerk respectively in the cinema-house run by respondent No. 2, have filed this petition under Art. 226 of the Constitution praying that the award of the Industrial Tribunal, Delhi, respondent No.. 1, dated July 23. 1968. made on a dispute raised by them be quashed and the Tribunal be directed to decide the reference on merits.

(2) Facts leading to this petition stated briefly are that 'on 1st November, 1964, both these petitioners were suspended from service by the employers pending inquiry into certain charges leveled against them. After inquiry, on May 24, 1965, they were dismissed from service and no payment was allowed to them either by way of salary or for the period of suspension. Thereupon they raised an industrial dispute and as it could not otherwise be settled, on April 15, 1967, the Lt. Governor, Delhi, referred the same for decision to the Industrial Tribunal. After inviting statement of claims, the learned Tribunal framed the following issues on the pleadings of the parties :

('1)Whether the dispute is only an individual and not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947?

(2)Whether Shri K. L. Mehta was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act on the date of his dismissal and the reference is, thereforee, incompetent ?

(3).Whether the reference is had on the grounds stated in para 5 of the written-

statement of the management ?

(4)Whether the dispute has been raised 19 months after the date of dismissal of the two workmen and if so, what is the effect?

(5)Whether there is a subsisting settlement dated 22nd October, 1963 between the Cine Employees' Association and the Motion Pictures Association which is a bar to the raising of the present dispute and the reference which followed What is the effect of this objection not having been raised in the written-statement ?

(6)Whether termination of service of Sarvshri K.L. Mehta and M. L. Luthra was unjustified If so, to what relief are these workmen entitled

(7)Whether these workmen are entitled to wages for the suspension period If so, what directions are necessary in this respect ?

(3) By award dated 23rd July. 1968, the Tribunal decided issues 1. 2, 3 and 4 against the managment but under issue No. 5 came to the conclusion that on October 22, 1963. there was a settlement proved as Exhibit M/6 before it between the Motion pictures Association representing the employers of the cinemas in Delhi (including the cinema house of respondent No. 2 where the petitioners were employed) and the Cine Employees' Association (representing the workers) which was binding on the parties. Para 5 of this Settlement, the Tribunal held, provided the mode of settling disputes arising between the-parties through arbitration and till that mode of settling the dispute was exhausted the reference for adjudication to the Tribunal was not maintainable. The reference. turn this reason, was held to be Barred and the award directed that the petitioners were not entitled to any relief. Shri Madan Mohan, the learned counsel appearing for the petitioners, has attacked the award on several grounds. His first and the foremost contention is that para 5 of this Settlement relied upon by the Tribunal did not in law constitute a Settlement within the. meaning' of sub-section (3) of S. 18 of the Industrial Disputes Act (hereinafter called 'the Act') so as to be binding on the parties and to operate as a bar to the adjudication of the dispute by the Tribunal. The contention has merit and in the view -of the matter that we are taking on this point we consider it unnecessary to go into the other grounds urged by Shri Madan Mohan in support of the relief.

(4) It would be appropriate at this stage for purposes of dealing with this point to give the particulars of the Settlement referred to by the learned Tribunal. Prior to the reference which resulted in the impugned award a dispute had arisen between the Motion Pictures Association and employees of 35 cinema-houses mentioned in the annexure annexed to the Memorandum of Settlement (copy filed as Annexure 'A' with the petition) in respect of additional dearness allowance and the introduction of a scheme of gratuity in the cinematograph exhibition industry in Delhi. This dispute was settled between the parties by means of the Settlement in question (Annexure 'A' referred above). The relevant terms of this Settlement, amongst others, provided that the Settelement would be for a period of four years and that members of the Motion Pictures Association in the Union Territory of Delhi represented by the owners of cinema-houses whose names had been mentioned in the annexure to the Settlement shall pay during the period of Settlement an additional dearness allowance of Rs. 12.00 over and above the dearness allowance that was at that time being paid to in terms of a previous award of the Tribunal dated November 9, 1959 and that a Committee appointed by both the parties will forthwith enter into negotiations and

examine the proposals put forward by either side in the matter of introduction of the scheme of gratuity. Clauses (5) of the Settlement then read as under :-

'5.Both parties solemnly declare that it is their intention and purpose to discuss and decide all schemes and disputes, whatsoever, arising throughout this industry by mutual discussions and negotiations, and if success is not achieved thereby, through arbitration, the terms of which shall be mutually agreed upon. If even the machinery of arbitration fails to achieve results, then the matter may be referred to the Tribunal as a last and final resort. Both the parties agree that they will settle all disputes by peaceful settlement and adjudication provided under the industrial Disputes Act, 1947, and will not resort to any direct action or pressure tactics or any other action which will disturb the smooth working of the industry or harmony and amity between the employers and the employees.'

(5) The argument of the learned counsel in substance is that this clause (5) did not amount to a binding settlement in the eve of law under the provisions of the Industrial Disputes Act as it did not amount to an agreement of a voluntary reference of disputes to arbitration as contemplated by S. 10-A of the Act which alone is recognised by the Act as the mode for voluntary reference. The direction of the Tribunal. thereforee, according to the learned counsel, that recourse should be had by the petitioners to arbitration for settlement of their dispute is wholly misconceived and against law. The submission finds full support from the provisions of S. 10-A of the Act. This section was inserted in the Act by S. 8 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 and provided for cases in which voluntary reference of disputes to arbitration could be made. The relevant part of it reads as under:-

10-A.'(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the disputes has been referred under S. 10 to a Labour Court or Tribunal or National Tribunal by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement. (1A) .....

(2)An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3)A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within 'one month' from the date of the receipt of such copy, publish the same in the Official Gazette.

'(3A).....(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4A)Where an industrial dispute has been referred to arbitration and a notification has been issued under subsection (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(5)Nothing in the Arbitration Act, 1940. (10 of 1940) shall apply to arbitrations under this section.'

(6) The section provides for a reference in case of an existing or apprehended industrial dispute by means of a written-agreement before the dispute is referred under S. 10 of the Act to arbitrator or arbitrators specified in the arbitration agreement including the presiding officer of a Labour Court or Tribunal or National Tribunal. The existence of an arbitration agreement, amongst others, with this condition in the prescribed form is a condition precedent to put in motion the machinery prescribed by the Act for voluntary arbitration. In the absence of an agreement of reference answering the conditions laid down in S. 10-A it is not open to any party to the dispute to move the appropriate Government in terms of subsection (3) of this Section. Clause (5) of the settlement in the instant case, reproduced above, does not name the arbitrator or arbitrators to decide the dispute. The Act does not envisage the appointment of an arbitrator or arbitrators competent to give an award under the Act where none is named by the parlies in the reference. The petitioner, thereforee, cannot have recourse to Section 10-A of the Act to be able to obtain an award under subsection (4) of this section deciding the dispute raised by them.

(7) Shri Lalit Bhasin, the learned counsel appearing for respondent No. 2 referred to a decision of the Madhya Pradesh High Court in appeal No. 1 of 1958 between Narayan and Hukamchand Mills Ltd. reported as 1960 II LLJ 615, (1) where it was observed during the course of the judgment on page 618 of the report that the provision for settlement of the dispute in a particular manner (which was clause Xii of the Settlement in that case) was in consonance with the scheme of the Act and in terms of labour legislation and, thereforee, could not be ignored. This was a case under the Bombay Industrial Relations Act (as adapted in Madhya Bharat) and the relevant clause 12 of the Settlement reproduced in para 6 of this judgment also contained a clear agreement that the disputes between the parties to the settlement were to be decided by the Government Labour officer subject to one appeal to the Labour Commissioner Madhya Bharat. No provisions analogous to S. 10-A of the Act fell for consideration by the Court in this case. The observations of the Court in the abstract, thereforee, do not help the respondents' case.

(8) Reliance was then placed by the learned counsel on Sasamusa Workers Union v. The State of Bihar (IV Indian Factories Journal 47) (2) in support of the proposition that the parties to the dispute can lawfully agree that a particular dispute may be decided by a third party and such an agreement will b& binding. We have gone through the report of this case, but find that the point for decision before the Patna High Court in this case was wholly different. The question principally was whether the provision for settlement of dispute by a third party such as Labour Commissioner whose decision was agreed to be accepted by the parties as final would be a settlement of dispute within the meaning of this expression as used in S. 12 of the Act and the Court held that the expression. 'Settlement of dispute' as used in this section did not necessarily refer to a settlement by the conciliation officer alone. The proposition's unassailable in so far as it goes. This case, again was decided on Setember 12, 1951 before S. 10-A was introduced in the Act and naturally, thereforee, this provision has not been taken into account. This case also for this reason is of no assistance to the petitioners.

(9) The learned counsel lastly placed strong reliance on Amin Chan Pyare Lal v. Second Punjab Industrial Tribunal 12 Fjr 206 where the Court observed that a

settlement arrived at between the parties to Industrial dispute before a conciliation officer should not be invalidated on technical grounds, and that a settlement containing a provision for reference of certain matters of dispute to a third party whose decision was to be binding on the parties cannot be invalid on the ground that the settlement did not itself settle the matters of dispute. This case also decides a different controversy and falls in the same category as the previous ones. It was decided on March 13, 1957 much before the provision for voluntary reference of dispute to arbitration (sec. 10-A) was introduced in the Act and as mentioned on page 210 of the report, under the settlement in this case, most of the disputes were to be discussed between the representatives of each party in the presence of Labour Officer whose decision in case of difference was to be final-so that there was a named arbitrator. This is not the position in the instant case. This case also is of no assistance to the respondents.

(10) Coming back now to the impugned award, as stated earlier, the learned Tribunal, while invoking the settlement and its clause (5) has said as under :-

'THEsettlement is, thereforee, binding on the parties and till the mode of settling the disputes by arbitration as provided in para 5 of the settlement Ext. M/6 is exhausted, the reference for adjudication to the Tribunal, in my opinion, is not maintainable.'

(11) We are unable to sustain this view of the learned Tribunal. For reasons we have set out above clause (15) of the Settlement cannot be pressed into service by the petitioners to have resourse to the mode of arbitration of the settlement of their dispute under the Act.

(12) A faint attempt was then made by the learned counsel for respondent No. 2 to urge that apart from reference under S. 10-A. of the Act it was open to the parties to agree to arbitration independent of the provisions of the Act also. No case was cited in support of this proposition. Confronted with the position that in a case like the present one which involves claim amongst others as to the termination of the services of the petitioners with the consequential relief of re-instatement if the termination was found to be illegal or unjustified, the learned counsel for respondent No. 2 was unable to press his argument with any force. The Act having prescribed a mode for the voluntary reference of disputes under the Act we do not see how the petitioners in this case could resort to any other mode of reference.

(13) As a result of the above, we are of the view that according to the Act as it stands in face of the provisions of S. 10-A of the Act, the finding of the Tribunal that the petitioners should have recourse to the mode of settling the dispute by arbitration is not sustainable in law. The award of the Tribunal dated July 23, 1968, has, thereforee, to be set-aside which we hereby do. The matter is remanded back to the Tribunal for decision according to law. Having regard to the circumstances of the case, we make no order as to costs.

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