CIVIL WRIT

Before K. L. Gosain and A. N. Grover, JJ.

PRABHUDAYAL HIMATSINGKA AND OTHERS,—
Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 80 of 1958

1959

Mar., 31st

Industrial Disputes Act (XIV of 1947)—Section 7(3)(c)—Construction of—Whether to be construed with reference to Article 217(1) of the Constitution—Appointment of a sole member Industrial Tribunal—Person appointed beyond the age of sixty years—Such appointment, whether valid—Industrial Disputes (Punjab Amendment) Act—(VIII of 1957)—Qualifying age of the presiding officer of the Industrial Tribunal raised to 67 years while Central Act fixed it at 65 years—Punjab amendment—Whether violative of Article 14 of the Constitution—Dispute between the employer and individual workman—Whether an "industrial dispute"—Industrial Disputes Act (XIV of 1947)—Section 10—Reference of dispute to the Tribunal by the Government—Reasons for—Whether to be stated—Section 33B—Provision regarding reasons to be stated for transfer—Whether mandatory or directory—Reasons for transfer not stated—Effect of.

Held, that section 7(3)(c) of the Industrial Disputes Act 1947 is not to be construed with reference to Article 217(1) of the Constitution and that clause (2) of that Article alone is relevant for the purpose of seeing whether a person is qualified for appointment as a Judge of the High Court or not. So the appointment of a person as a sole member Industrial Tribunal beyond the age of sixty years is valid if he fulfills the qualification mentioned in Clause (2) of Article 217 of the Constitution.

Held, that it is open to the State Legislature to fix a different age upto which member of an Industrial Tribunal can function, from the age fixed by the Central enactment. It is not possible to see how any violation of Article 14 can be alleged much less established in such matter.

Held further, that a dispute between an employer and single employee could not per se be an industrial dispute, but it might become one if it is taken up by the Union or a number of workmen. If workmen as a body or a considerable section of them make common cause with the individual workmen, then such a dispute would be an industrial dispute.

Held, that it is for the appropriate Government under section 10 of the Industrial Disputes Act, 1947, to decide whether a reference should be made in a particular case or not and it need not state any reasons for making the reference. Nor is it necessary for the Government to ascertain particulars of the dispute before making a reference or to specify them in the order.

Held, that the provision with regard to reasons being given for transfer is directory and not mandatory. Section 33B does not lay down that the order of transfer will not be effective if reasons, therefor, are not given. The omission to give reasons, therefore, cannot invalidate the order of transfer.

G. D. Karkare v. *T. L. Shevde* (1), *M. H. Quareshi* v. *State of Bihar* (2), *The Kandan Textile Ltd.,* v. *Industrial Tribunal (I), Madras and others* (3), *Central Provinces Transport Services Ltd.,* v. *Raghunath Gopal Patwardhan* (4) and *the Newspapers Ltd.* v. *The State Industrial Tribunal, U. P.* (5), referred to.

Case referred by the Hon'ble Mr. Justice A. N. Grover, on 18th August, 1958 to a Division Bench for decision due to difficult questions of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Gosain and Hon'ble Mr. Justice Grover finally decided the case on 31st March, 1959.

Petition under Article 226/227 of the Constitution of India praying that a writ in the nature of Mandamus, Prohibition or quo warranto *be issued quashing the reference and the proceedings pending before Respondent No. 2 and*

(1) A.I.R. 1952 Nag. 330
(2) A.I.R. 1958 S.C. 731
(3) A.I.R. 1951 Mad. 616
(4) 1956 S.C.R. 956
(5) 1957 S.C.R. 754

further praying that respondent No. 2 be directed not to proceed with the adjudication of the matters referred to it by notification No. 10883-C-LP-56/3745, dated 8th November, 1956.

D. K. MAHAJAN & GANGA PARSHAD JAIN, for Petitioners.

S. M. SIKRI and ANAND SWAROOP, for Respondents.

ORDER

Grover, J. GROVER, J.—This judgment will dispose of Civil Writ No. 80 of 1958, and Civil Writ No. 1167 of 1958, in which common points of law are involved.

The facts in Civil Writ No. 80 of 1958 may be stated : Shri Avtar Narain Gujral, whose date of birth is stated to be 4th June, 1892, was appointed an Industrial Tribunal by a notification dated 29th August, 1953, under Section 7 of the Industrial Disputes Act, 1947 (to be referred to as the Act). By a notification dated 8th November, 1956, made under section 10(1)(c) of the Act, certain disputes existing between the petitioners, who are the auspices of Birla Education Trust under whose auspices the Technical Institute of Textiles is being run at Bhiwani, and the workers represented by the Union called the T.I.T. Staff Union, were referred for adjudication. The petitioners appeared before the Tribunal and claim to have raised the question of jurisdiction of the Tribunal and the legality of the reference principally on the ground that Shri Gujral could not have been appointed to the Industrial Tribunal having attained the age of 60 years on 4th June, 1952. On 19th April, 1957, two notifications were issued by the Punjab Government. One notification was made in exercise of the powers conferred by section 7A of the Act as inserted by section 4 of the Industrial Dis-

putes (Amendment and Miscellaneous Provisions) Act, 1956, constituting an Industrial Tribunal with headquarters at Jullundur and appointing Shri Avtar Narain Gujral as its Presiding Officer with effect from the date of the publication up to 3rd June, 1957. In addition to his duties as presiding officer of the newly constituted Tribunal, Shri Avtar Narain Gujral was to continue for the disposal of pending proceedings as member of the Second Industrial Tribunal, Amritsar, and as sole member of the Industrial Tribunal, Punjab, Jullundur, which had been constituted under the Act (*vide* Annexure 'I'). By means of the second notification, the term of appointment of the sole member of the Industrial Tribunal, Jullundur, was extended up to the last day of October, 1957, or such date as the proceedings in relation to industrial disputes pending in the aforesaid Tribunal before 10th March, 1957, were disposed of, whichever was earlier It may be mentioned that according to section 7C, which was inserted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the age up to which the presiding officer of the Tribunal was not to be disqualified was raised to 65 years. The Act was amended so far as the State of Punjab was concerned by a notification published in *the Punjab Gazette Extraordinary,* dated June 3, 1957, by the Industrial Disputes (Punjab Amendment) Act, 1957. Section 7C of the Central Act was amended and the age of disqualification for appointment to the Tribunal was raised to 67 years. By means of another notification, dated 4th June, 1957, the Punjab Government extended the term of appointment of Shri Gujral as presiding officer of the Industrial Tribunal, Jullundur, from 4th June, 1957 to 28th February, 1958 (Annexure 'J'). The present petition under Article 226 of the Constitution was filed on 30th January, 1958. It may be

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stated that by an order, dated 31st October, 1957, respondent No. 1, in exercise of powers under section 33B of the Act, had transferred all pending cases from respondent No. 2, as previously constituted, to respondent No. 2, as newly constituted under Section 7A of the Act. As certain important questions of law were raised in the petition, it was considered desirable that they should be decided by a Division Bench and now the matter has been placed before us for deciding the points of law that have arisen for decision.

The preliminary objection that had been raised before, and which has been pressed again, on behalf of the State before us would be concluded by the view that has been expressed by us in Civil Miscellaneous Application No. 143-P of 1956, which was heard along with these petitions. In the present case (Civil Writ No. 80 of 1958), a writ of prohibition is being sought on the ground that the Tribunal suffers from patent lack of jurisdiction. In the other case (C.M. No. 143-P of 1956), we have expressed concurrence with the view expressed by Desai, J., in *S. C. Prashar* v. *Vasantsen Dwarkadas* (1), and *Madhvalal Sindhoo* v. *V. R. Idurkar* (2), According to that view although the issuance of prohibition is discretionary with this Court, but where there is patent lack of jurisdiction a writ will be granted "though not of right, nor of course, yet almost as a matter of course", unless an irresistible case for withholding the writ is made out.

It is contended by the learned Advocate-General that the petitioners have disentitled themselves to any relief from this Court on the ground of acquiescence, laches and delay. It is pointed out that in November, 1956, certain preliminary

(1) (1956) 29 I.T.R. 857
(2) (1956) 30 I.T.R. 332

objections were raised by means of Annexure 'F', but the main ground with regard to the illegality and invalidity of the appointment of Shri Gujral was not raised, and it was only after all the proceedings had taken place and when the Tribunal was about to announce the award that the challenge to the jurisdiction of the Tribunal was made. Although acquiescence and laches would be a relevant factor and will have to be taken into consideration while exercising discretionary power under Article 226 of the Constitution, it is unnecessary to decide the effect of the same in the present case, as we are satisfied that there is no merit in the points that have been raised on behalf of the petitioners.

The principal point that has been agitated on behalf of the petitioners in both the petitions is that the appointment of Shri Gujral in 1953, was illegal and void as he had attained the age of 60 years on 4th June, 1952. It is submitted that if his appointment in the year 1953, was bad, he could not get the benefit of the amended provisions contained in section 7C of the Act by which the age of disqualification had been raised to 65 years. In order to see whether Shri Gujral was qualified for being appointed as a member of the Industrial Tribunal in the year 1953, it is necessary to refer to the provisions of section 7(3) which are in the following terms : —

> "7(3). Where a Tribunal consists of one member only, that member, and where it consists of two or more members, the Chairman of the Tribunal shall be a person who—
>
> (a) is or has been a Judge of a High Court; or

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(b) is or has been a district Judge ; or

(c) is qualified for appointment as a Judge of a High Court :

Provided that no appointment under this sub-section to a Tribunal shall be made of any person not qualified under clause (a) or clause (b) except with the approval of the High Court of the State in which the Tribunal has, or is intended to have, its usual seat."

It is submitted that Sri Gujral was not qualified for appointment as a Judge of the High Court on 29th August, 1953, when his appointment to the Tribunal was made. Reference is invited in this connection to Article 217 of the Constitution of India, before its amendment in 1956, which relates to the appointment and conditions of the office of a Judge of a High Court. The relevant portion of the aforesaid Article may be set out below :—

"217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office until he attains the age of sixty years:

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India; and—

(a) has for at least ten years held a judicial office in the territory of India ; or

(b) has for at least ten years been an advocate of a High Court in any State specified in the First Schedule or of

two or more such Courts in succession.

* * * *"

It is urged that a Judge of a High Court can hold office until he attains the age of 60 years. In other words, a person who is above the age of 60 years would not be qualified to be appointed as a Judge. With regard to Article 217(2), which deals with qualifications for appointment as a Judge, it is pointed out that the language employed is of a negative nature and does not cover all the qualifications which have been laid down for appointment of a Judge. In reply it is submitted by the Deputy Advocate-General that the very language of section 7(3) of the Act shows that a person who has or has been a judge of a High Court can also be appointed to the Tribunal, and this shows that it was never within the contemplation of the legislature that the age of retirement of a Judge of a High Court should be taken into consideration for the purposes of finding out whether he is qualified for appointment as a Judge or not. It is further pointed out that Article 217(1) of the Constitution makes a provision, apart from other matters relating to the appointment of a Judge of a High Court, that he shall hold office until he attains the age of 60 years. This has nothing to do with the qualifications which are given in Article 217(2) which specifically mentions the standing of a person as a judicial officer or an advocate of a High Court for a specified period. This part of Article 217 is quite distinct and different from the first part which has nothing to do with the qualifications for appointment as a Judge. Our attention was also invited to Article 224 of the Constitution as substituted by the Constitution (Seventh Amendment) Act, 1956, in which it is provided that the President may appoint "duly qualified persons" to to be additional Judges of the Court for such period

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not exceeding two years as he may specify. These words have reference to the qualifications set out in Article 217(2) and can possibly have no reference to the provision relating to age contained in Article 217(1), because in Article 224 itself it has been provided that no person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of 60 years. The Deputy Advocate-General has relied upon *G. D. Karkare* v. *T. L. Shevde* (1), where the first clause of Article 217 came up for consideration in a matter which is quite parallel to the present case. There a question arose whether the appointment of the Advocate-General was vitiated because he was past 60 years on the date of his appointment. The appointment of an Advocate-General is provided for by Article 165 of the Constitution. The first clause of the aforesaid Article is in the following terms .—

> "The Governor of each State shall appoint a person who is *qualified* to be appointed a Judge of a High Court to be Advocate-General for the State."

The Nagpur Bench expressed the view that the qualifications for the appointment of a Judge of a High Court were prescribed in the second clause of Article 217 and that the first clause of Article 217 could only be construed as one prescribing the duration of the appointment of a Judge. After considering the provisions contained in Articles 217, 221, 222, 223 and 224, it was held that first clause of Article 217 could not be read with the first clause of Article 165 so as to disqualify a person from being appointed Advocate-General after the age of 60 years. We are in respectful agreement with the view expressed with regard to the first clause of Article 217 by the Nagpur Court and consider that section 7(3)(c) of the Act is not to be construed

(1) A.I.R. 1952 Nag. 330

with reference to Article 217(1) of the Constitution and that clause (2) of that Article alone is relevant for the purpose of seeing whether a person is qualified for appointment as a Judge of a High Court or not. In this view of the matter the principal contention raised by Mr. Daya Kishan Mahajan with regard to the initial appointment of Mr. Gujral being bad must fail. If his appointment in 1953, was legal and valid, it is conceded that his appointment later on did not become illegal and would be perfectly valid.

The next submission of the learned counsel which was put forward in a half-hearted manner is that according to the Central Act, as amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the age up to which the presiding officer of the Tribunal was not to be disqualified was raised to 65 years. That age has, however, been raised to 67 years by the Industrial Disputes (Punjab Amendment) Act, 1957. It is urged that this infringes Article 14 of the Constitution. It is submitted that there was no reason or justification for raising the age limit in the Punjab to 67 years when it was 65 under the Central Act. In *M. H. Quareshi* v. *State of Bihar* (1), their Lordships had occasion to lay down once again the meaning, scope and effect of Article 14 in the following words :—

> "It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from

(1) A.I.R. 1958 S.C. 731

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> others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles."

In the present case no reasons have been stated in the petition, nor have any been pointed out to us to show that there has been a violation of the constitutional principles. It is open to the State legislature to fix a different age up to which member of an Industrial Tribunal can function from the age fixed by the Central enactment. It is not possible to see how any violation of Article 14 can be alleged much less established in such a matter.

It is next urged that the transfer of the proceedings pending before the old Tribunal under section 33B of the Act to the new Tribunal was bad as no reasons had been stated which it is necessary to do under section 33B. Nothing, however, has been stated showing that any prejudice was caused to the petitioners in this behalf. The provision with regard to reasons being given for transfer is directory and not mandatory. Section 33B does not lay down that the order of transfer will not be

effective if reasons therefor are not given. The omission to give reasons, therefore, cannot invalidate the order of transfer (*vide* C. W. 1112 of 1957 decided by Bishan Narain, J., on 11th April, 1958—L. P. A. No. 130 of 1958 filed against it was dismissed *in limine.*)

The next point that has been urged (and all the submissions that follow are made in C.W. 80 of 1958) is that the reference of the disputes between the petitioners and their workmen was made on 18th November, 1956, and the life of the Tribunal was extended from time to time, the final extension having been made up to 31st October, 1957. It is submitted that the reference should have been made afresh each time and that in any case the life of the Tribunal came to an end on 31st October, 1957, and the proceedings could not be continued further and that these proceedings could not be entrusted to a new Tribunal constituted under the Act as amended by the Act of 1956, without a fresh reference under the law. The reply on behalf of the respondents is quite clear that by the notification dated 31st October, 1957, all the cases pending with the Tribunal under the old Act were transferred to the Industrial Tribunal which had been appointed under Section 7A of the amended Act. Section 33B as introduced by the amending Act of 1956, confers the power of transfer on the State Government. By virtue of the aforesaid provision the Government can withdraw any proceedings under the Act pending before a Tribunal and transfer the same to another Tribunal and that is what was done in the present case. Thus, there is no force in the contention raised on this point.

It is then submitted that in April, 1956, the Union called the T.I.T. Staff Union, had made certain demands from the petitioners. These demands were taken up for conciliation by the Conciliation

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Officer, Punjab, under section 12 of the Act. The Conciliation Officer sent a report under section 12(4) in respect of those demands with regard to which the matter could not be settled. Certain demands, however, were agreed to. According to the learned counsel for the petitioners, the procedure laid down in section 12(5) of the Act should have been followed and reference should have been made under that provision. Section 12(5) provides that if, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such a reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. There is no force in this contention at all. The reference in the present case was made under section 10(1)(c) of the Act and that is the only provision under which a reference of disputes could be made to a Tribunal. It is for the appropriate Government to decide whether a reference should be made in a particular case or not and it need not state any reasons for making the reference. Nor is it necessary for the Government to ascertain particulars of the dispute before making a reference or to specify them in the order,—*vide The State of Madras* v. *C. P. Sarathy and another* (1), .

The next contention on behalf of the petitioners is that respondent No. 3 (T.I.T. Staff Union) represented only about 43 out of 3,200 workmen of the Mills managed by the petitioners and, therefore, the aforesaid Union could not be regarded as representative of a substantial number of workmen. In view of this there could be no industrial dispute between the petitioners and respondent No. 3 and the entire conciliation and adjudication proceedings were without jurisdiction. The position taken

(1) A.I.R. 1953 S.C. 53

up by the State is that the aforesaid Union consists of only the clerical and the supervisory staff of the factory numbering about 150 workmen and of that category 43 were members of the Union at the time the dispute was raised. It was further stated in para 4 of the written statement that it appeared from the report of the Conciliation Officer, Annexure 'D', that the representative character of the Union was not challenged by the Management at any stage nor any of the workmen of the factory had opposed the demands raised by the Union. Our attention was invited to *The Kandan Textile Ltd.* v. *The Industrial Tribunal I Madras and others* (1). In that case the view expressed was that a dispute which concerned only the rights of individual workers could not be held to be an industrial dispute. In *Central Provinces Transport Services Ltd.* v. *Raghunath Gopal Patwardhan* (2), the question whether a dispute by an individual workman would be an 'industrial dispute' as defined in section 2(k) of the Act was considered and reference was made to the view of Rajamanner, C.J., in the *Madras case* (1) referred to before. It was pointed out that it became unnecessary to decide the point in the *Madras case* (1) as the Madras Court had come to the conclusion that the reference itself was bad for the reason that there was no material on which the Government could be satisfied that there was a dispute. According to Venkatarama Ayyar, J., the preponderance of judicial opinion was in favour of the view that a dispute between an employer and a single employee could not *per se* be an industrial dispute, but it might become one if it was taken up by the Union or a number of workmen. The matter was, however, left open as in the case which was decided by their Lordships the question did not arise directly under the Act,

(1) A.I.R. 1951 Mad. 616
(2) 1956 S.C.R. 956

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but it arose under the Central Provinces and Berar Industrial Disputes Settlement Act XXIII of 1947, and in the view which was taken of the rights of the respondent under that statute there was no need to express a final opinion on the question whether a dispute *simpliciter* between an employer and a workman would be an 'industrial dispute', within section 2(k) of the Act. In *The Newspapers Ltd.* v. *The State Industrial Tribunal, U.P.* (1), it has been laid down that a dispute between an employer and a single workman does not fall within the definition of "industrial dispute" under the U.P. Industrial Disputes Act, 1947. But though the applicability of the Act to an individual dispute as opposed to a dispute involving a group of workmen is excluded, if the workmen as a body or a considerable section of them make common cause with the individual workman then such a dispute would be an industrial dispute. In the present case it has not been suggested that the dispute is between an employer and a single workman and it appears that the representative character of the Union was never challenged at any previous stage. It is, therefore, not possible to accept the objection that has been raised.

It was agreed by the learned counsel appearing for the parties that if all the points of law are decided by the Bench the petitions may be finally disposed of and need not be sent back to the learned Single Judge as no question of fact requires decision. In view of the fact that the petitioners have failed on all the contentions that were raised on their behalf both the petitions must be dismissed. In the circumstances of the case, however, the parties are left to bear their own costs in this Court.

GOSAIN, J.— I agree.

K. S. K.

(1) 1957 S.C.R. 754