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as to what repercussions this order will have on the consent decree, so far as the other parties to it are concerned, is left open as that was not the matter which was canvassed before the learned Single Judge.

For the reasons recorded above, this appeal fails and is rejected but there will be no order as to costs. The parties are directed to appear before the lower appellate Court on 21st March, 1966. The lower appellate Court is directed to dispose of the appeal without any further delay.

Falshaw, C. J.

FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before S. B. Capoor, J.

M/S MULLER & PHIPPS (INDIA). PRIVATE LTD.,—*Petitioner*

versus

M/S MULLER & PHIPPS (INDIA), PRIVATE LTD., EMPLOYEES' UNION, AND OTHERS,—*Respondents.*

C.W. 754-D of 1965.

1966

February 24th

Industrial Disputes Act (XIV of 1947)—Ss. 2(k) and 25-H—Dispute regarding re-employment of retrenched workman—Whether can be sponsored by the Union of workmen of that establishment although the concerned workman was not its member when the dispute arose—Vacancy occurring in which retrenched employee could be re-employed but filled in by promotion of a junior person in the office—Retrenched employee—Whether deemed to have been re-employed from the date the vacancy occurred.

Held, that a Union of the workmen of an establishment can espouse the cause of a retrenched workman who is not its member at the time the dispute arose with regard to his re-employment under section 25-H of the Industrial Disputes Act. 1947. It cannot be said that the Union had no direct and substantial interest in his re-employment.

Held, that the company was bound to offer the vacancy of a salesman to the retrenched salesmen in order of seniority and could not fill it by promoting a junior clerk. The retrenched salesman is,

therefore, entitled to claim his re-employment from the date of the accrual of the vacancy in which he could be re-employed and which had to be offered to him under section 25-H of the Industrial Disputes Act but was not offered.

Petition under Article 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a Writ of Certiorari *or any other appropriate writ, direction or order, which may be fit and proper in the circumstances of the case, to quash the impugned Award. dated 17th August, 1965, of the Labour Court, Delhi. published in the Delhi Administration Gazette, Part VI, dated 28th October, 1965 and to pass such other and further orders as this honourable court may deem fit and to allow this position with costs.*

NIREN DE, ADDITIONAL SOLICITOR-GENERAL OF INDIA, for the Petitioner.

R. N. ROY. PRESIDENT OF THE UNION, for the Respondents.

ORDER

CAPOOR, J.—By this writ petition under Articles 226 and 227 of the Constitution of India Messrs Muller and Phipps (India) Private, Limited, challenge the order of the Labour Court, Delhi (respondent No. 3 to the petition), whereby, on an industrial dispute sponsored by Messrs Muller and Phipps (India Private, Limited, Delhi, Branch Employees' Union (respondent No. 1 to the petition), the Labour Court by its award (copy Annexure 'Q' to the petition) directed that K. C. Sud (respondent No. 2) be deemed to be re-employed with the petitioner-company from the 21st of May, 1962, and shall also be entitled to the wages he was drawing at the time of retrenchment and also other benefits from 21st of May, 1962, onwards. Capoor, J.,

The material facts are not disputed. Respondent No. 2 was, in the year 1955, taken into the employment of the petitioner-company as a salesman. There was some retrenchment in the petitioner-company and respondent No. 2 was retrenched with effect from the 28th of January, 1958, and some other salesmen were also retrenched in that year on the ground that they were surplus to the resquirement. In September, 1961, the petitioner-company required a salesmen and promoted its clerk S. C. Goyal, to the post of salesman. On 21st of May, 1962, the petitioner-company took back in its employment one S. L.

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Mongia, a salesman who had been retrenched in the year 1958, but was senior to respondent No. 2, and it was not till the year 1964 that the petitioners-company, for the first time, made an offer to respondent No. 2 to come back as a saleman. The communication in this respect is Annexure 'A' dated 25th of June, 1964, and it was mentioned in the opening paragraph that the company had a vacancy of a saleman likely to be filled up in the near future and since K.C. Sud was retrenched by the company he was given notice to send his application to be considered on preferential basis to fill that vacancy. This offer was obviously, made in terms of section 25-H of the Industrial Disputes Act, 1947 (14 of 1947). Respondent No. 2 was also asked to state where he had been employed since he was retrenched and whether at present he was gainfully employed in any business. This respondent by his letter (copy Annexure 'B'), dated 2nd of July, 1964 stated that he had already submitted his application dated 16th of November, 1961, and his claim for re-employment on the post of a salesman was under the provisions of the Act, with effect from the 16th of November, 1961. It was also asserted that there was no provision in the Act under which the respondent was obliged to reply to the queries made in the second paragraph of the communication (copy Annexure 'A'). These queries were not answered in the further correspondence between the petitioner company and respondent No. 2 except that in a letter dated 10th of August, 1964, he said that since his retrenchment from the petitioner-company he was not employed anywhere and was depending upon an investment made in the year 1947. Thereafter, respondent No. 2's cause having been espoused by respondent No. 1, the Delhi Administration, by its order dated 2nd of January, 1965 (copy Annexure 'K') referred that dispute to the Labour Court, the term of reference as given in the Schedule being—"Whether Shri K. C. Sud is entitled for re-employment under section 25-H of the Industrial Disputes Act, 1947, as claimed by him and if so, what directions are necessary in this respect?"

On the allegations made by the parties the Labour Court framed the following issues:—

(1) Whether the dispute is an individual dispute?

(2) Whether the applicant was a workman?

(3) Whether legally the applicant cannot claim any relief under section 25-H?

(4) Relief as in the reference.

All the points were found by the Labour Court in favour of the workman.

Section 25-H of the Act may be reproduced—

"Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons."

Mr. Nire De, on behalf of the petitioner-company, has raised the following points:—

(1) The dispute in question was not an industrial dispute inasmuch as respondent No. 2 had, shortly after his retrenchment, ceased to be a member of the Union (respondent No. 1) and it was long after the year 1958 that this industrial dispute was raised;

(2) The case of a person taken into employment by the employer under section 25-H of the Act is one of re-employment and not of re-instatement and hence the Labour Court was not justified in a direction that the workman shall be entitled to the wages and other benefits which he was drawing at the time of retrenchment;

(3) Respondent No. 2, according to the finding of the Labour Court, was a partner in certain retail businesses which engaged in the sale of medicine. As such he was engaged in a business competitive to that of the petitioner-company, and since all that section 25-H lays down is that the retrenched workmen shall have preference over other persons, the petitioner-company was not obliged to take back into its employment the person who was engaged in such competitive business; and

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(4) the petitioner-company was entitled to fill up the vacancy arising in September, 1961, by promoting its clerk, S. C. Goyal, and the reference in section 25-H was to the employer 'taking into his employment' and not to promotions of persons already in his employment. S. L. Mongia was senior to respondent No. 2 and the next appointment of a salesman, who was junior to respondent No. 2, was made on 9th of July, 1962, so that, in any case, the impugned order could not have operation from the date earlier to the 9th of July, 1962.

As regards the first point, the Rules of the Union (respondent No. 1) have been placed on record by the petitioner-company,—*vide Annexure 'L'* and according to rule 4(a) only employees of the Muller & Phipps (India) Limited, Delhi Branch, were eligible for ordinary membership. It follows, therefore, that after being retrenched from such employment respondent No. 2 could not continue as an ordinary member of the Union of the Employees and if Mr. De's suggestion in this connection is taken to its logical conclusion, it would mean that the cause of a retrenched employees for re-employment under section 25-H could not be espoused by his fellow workmen and hence the retrenched employee, for contravention of section 25-H so far as he was concerned, would not be in a position to raise any dispute. This contention, on the face of it, is untenable. 'Industrial dispute' under section 2(k) of the Act is defined as follows:—

> " 'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen 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."

This definition has been interpreted by the Supreme Court in *Assam Chah Karmachari Sangh* v. *Dimakuchi Tea Estate* (1), and S. K. Das, J., speaking for the majority of the Court, observed (at page 513) that the expression

(1) (1958) I L.L.J. 500.

"any person" in section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context: the two crucial limitations are—

> "(1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and
>
> (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest."

Now, it cannot be said that the Union had no direct and substantial interest in the re-employment, under section 25-H of the Act, of respondent No. 2, who had been earlier retrenched from the employment of the petitioner-company, and as such he was a workman under clause (k) of section 2 of the Act. The Union, according to the list of members annexed to Annexure 'L', consisted of 27 member-employees of the petitioner company and, as stated on behalf of respondents Nos. 1 and 2, the petitioner-company had only 31 employees at the date of the reference. The Union was, therefore, certainly a representative Union. Accordingly, it would not be correct to say that the Union could have sponsored the dispute in the instant case only if Sud was, at the time of dispute arose, a member of the Union. The first contention advanced on behalf of the petitioner-company is, therefore, repelled.

Point No. (2).

When questioned, Mr. De admitted that there was very little difference in the grade which respondent No. 2 had and the pay which he was drawing at the time he was retrenched and the grade and pay which would be given to him if the impugned order was implemented. So far as this question was concerned, the second point is only academic and Mr. De did not press it in the course of his arguments.

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Point No. (3).

It was stated at the bar that respondent No. 2 is a partner in two retail shops—Messrs Cheap Stores and Novelty Stores—which are engaged in the sale of general merchandise. According to Mr. De's contention, medicines are also sold in these Stores and this business must be regarded as competitive to that of the petitioner-company, because it was possible that at these Stores the sale of medicines manufactured by rival companies may be pushed at the expense of the sale of medicines manufactured or sold wholesale by the petitioner-company. It is acknowledged that the petitioner-company does not engage in the retail sale of medicines and so, strictly speaking, it cannot be said that there is any direct competition between the business of the petitioner-company and that of the two Stores in which respondent No. 2 is a partner. That was the approach of the Labour Court, which further observed that since it was admitted that the company was also supplying their goods to the concerns in which the workman was, a partner, it may be actually said that the business of the company was promoted by the workman rather than that he entered into competition with that business. I cannot see anything fundamentally wrong with that approach and, in the circumstances, it must be held that the excuse put forward by the petitioner-company for not giving re-employment to respondent No. 2—viz., that he refused to answer in detail the queries made by it in paragraph 2 of the letter dated 25th of June, 1964—was not justified.

Point No. (4).

As regards the last point, Mr. De has very fairly conceded that if the above points are found against the petitioner-company it would follow that it committed a breach of section 25-H of the Act and it has now to be seen what was the date of that breach. The Labour Court in the impugned order was of the view that salesmen is a separate cadre from that of clerks, which is a junior cadre to the former and that the whole purpose of section 25-H would be foiled if the management is given discretion to make promotions from lower cadres to vacancies which should under section 25-H be filled by the retrenched employees. Hence it held that the vacancy which arose in September,

1961 and was filled by the promotion of S. C. Goyal, a clerk, should actually have been offered to the senior-most retrenched salesman, viz., S. L. Mongia, and in the vacancy filled up by S. L. Mongia, respondent No. 2 should have been fixed up in employment. That is how it was held by the Labour Court that respondent No. 2 should be deemed to be re-employed from the 21st of May, 1962. Learned counsel for the petitioner-company objected that section 25-H would not be attracted in the case of promotion to the disputed vacancy from a lower cadre and in this connection emphasis was placed on the words in section 25-H, viz., "the employer proposes to take into his employ any person." However, the concluding words of section 25-H are—"the retrenched workmen who offer themselves for re-employment shall have preference over other persons", and this must be deemed to include preference over persons in the lower cadre who are, for the time being, in the employment of the employer. Rule 78 of the Rules made under the Industrial Disputes Act lays down the procedure for re-employment of the retrenched workmen and requires the employer to display the vacancies on a notice-board at least 10 days before the date on which the vacancies are to be filled and also to give notice by post of these vacancies to all the retrenched workmen eligible to be considered therefor. If the interpretation sought to be given on section 25-H by learned counsel for the petitioner is accepted, the Rules, as well as the statute itself, could easily be circumvented by an employer, who, for some ulterior motive did not want to offer re-employment to a retrenched workmen. This interpretation is, therefore, not acceptable.

The matter may be looked at from another angle, suppose that the vacancy of salesman, in which Goyal was fitted in, arose while respondent No. 2 and Mongia were still in service and had not been retrenched. It was presumably open to the employer to fill up that vacancy by promotion, but then the promoted person would have ranked as junior to Mongia and respondent No. 2, and, in the event of retrenchment, he would have been the first to go. The management clearly contravened rule 78 by not offering the vacancy, in which Goyal was fitted in, to its retrenched salesman and if respondent No. 2's re-employment is to take place from 9th of July, 1962, as argued by

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learned counsel for the petitioner-company, the effect would be that not only respondent No. 2 but Mongia also, would become junior to Goyal. Such a result would be, on the face of it, inequitable. I cannot, therefore, find in the impugned order any infirmity which could be rectified in exercise of the extraordinary jurisdiction of this Court. The writ petition is, therefore, dismissed wth costs.

B.R.T.

APPELLATE CIVIL

Before Harbans Singh, J.

BAKKAR SINGH AND ANOTHER —*Appellants*

versus

BAGGU SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1248 of 1965.

1966.

February 28th

Punjab Pre-emption Act (I of 1913)—S. 8(2)—Whether ultra vires the Constitution—Law of pre-emption—Scope of—"Rai Sikhs" and "Mahtams"—Whether interchangeable terms.

Held, that guidance for the exercise of the powers under section 8(2) of the Punjab Pre-emption Act is available from the preamble and the operative provisions of the Act. Moreover such exercise of power does not amount to legislation. Hence this section is not *ultra vires* the Constitution.

Held, that the law of pre-emption is an exception to the ordinary law of the land by which any person is at liberty to purchase land. Provisions in the Pre-emption Act provide an exception and give a preferential right of taking over sales against the wishes of the purchasers and in such a case it is only proper that the State Government be given power in appropriate cases to exempt certain sales from the provisions of the Act and the result is that so far as the exempted sale is concerned, the law applicable is the ordinary law of the land.

Held, that the "Rai Sikhs" are also known as "Mahtams" and these two words are inter-changeable.

Second Appeal from the decree of the Court of Shri Muni Lal Verma, II Additional District Judge, Ferozepore, dated the 31st day of May, 1965 reversing that of Shri Vinod Kumar Jain, Sub-Judge IInd Class, Fazilka, dated the 16th January, 1965, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

H. R. AGGARWAL, ADVOCATE, for the Appellants.

N. L. DHINGRA, ADVOCATE, for the Respondents.