the pleasure of the President or the Governor cannot be controlled or fettered except to the extent provided in Article 311 of the Constitution, the President or the Governor may respectively direct that such pleasure must be exercised in accordance with the rules or the statute made in that behalf under Article 309 of the Constitution. If such rules or statutory provisions exist and the competent authority proceeds to exercise power in the matter of taking disciplinary action against a Government servant it is bound to follow the procedure prescribed by such provisions and their non-compliance would be justiciable.

For the reasons given above, I would answer the question referred to the Full Bench in the affirmative.

MEHAR SINGH, C.J.—I agree.

SHAMSHER BAHADUR, J.—I also agree.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and Daya Krishan Mahajan, J.

THE MANAGEMENT OF THE KARNAL DISTILLERY CO. LTD.,—*Appellant*

versus

THE WORKMEN OF KARNAL DISTILLERY CO. LTD. AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 144 of 1965

July 12, 1966

Industrial Disputes Act (XIV of 1947)—S. 10—Industrial Tribunal—Whether can determine the validity of reference on the ground that no industrial dispute existed between the management and the workmen—Reference by Government—Whether conclusive.

Held, that under section 10 of the Industrial Disputes Act, 1947, a Tribunal can only decide an industrial dispute and the Government can only refer an

industrial dispute for decision if it did exist on the date of the reference. Therefore, before a Tribunal can proceed to determine an alleged dispute on the merits, it has got to determine, if an objection is raised, whether there is or there is not an industrial dispute.

Held, that the reference of a dispute for adjudication to a Tribunal or a Court by the Government under section 10 of the Act is, no doubt, an administrative act but it does not mean that whenever Government takes a decision, it is conclusive so far as the Tribunal is concerned. The Tribunal constituted under the Act can only entertain an industrial dispute. What is an industrial dispute has been defined in Section 2(k) of the Act; and if what is referred to the Tribunal is not an industrial dispute, the Tribunal *per se* would have no jurisdiction to determine the same. Therefore, on first principles, it must be held that it is open to the Tribunal to determine whether a dispute referred to it is or is not an industrial dispute.

Letters Patent Appeal under Clause 10 of the Letters Patent against the Judgment, dated 19th February, 1965, passed by the Hon'ble Mr. Justice Shamsher Bahadur in Civil Writ No. 98 of 1963.

M. L. SETHI AND R. L. SHARMA, ADVOCATES, for the Appellant.

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Respondents.

JUDGMENT.

MAHAJAN, J.—A petition under Articles 226 and 227 of the Constitution of India directed against the award of the Industrial Tribunal was allowed by a learned Single Judge of this Court. Against the order of the learned Single Judge, an appeal under Clause 10 of the Letters Patent has been preferred by the respondent—the Management of the Karnal Distillery Company Limited, Karnal. The relevant facts are few and the controversy before the learned Snigle Judge related to a very short matter, namely, whether the Industrial Tribunal could determine the validity of the reference on the ground that there existed no industrial dispute between the management and its workers.

By a notification, dated the 21st August, 1962, the State Government referred certain items of dispute between the workmen of the Karnal Distillery Company, Limited and the management of that company to the Industrial Tribunal, Punjab, for adjudication under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The following items of dispute were referred :—

"(1) Whether the grades and scales of all the workmen should be fixed ? If so, what should be these grades and with what details ?

(2) Whether the workmen are entitled to the grant of casual leave, sick leave and festival holidays with Wages in a year ? If so, how much and with what details ?

(3) Whether the duties of the workmen should be specified ? If so, with what details ?

(4) Whether the management be required to maintain the service records of the workmen of the establishment and also furnish appointment letters to the workmen ? If so, with what details ?

(5) Whether the workmen are entitled to the grant of bonus for the years 1960-61 ? If so, what should be the quantum of bonus and terms and conditions of its payment ?

(6) Whether the management be required to make promotions on the basis of seniority-cum-efficiency of a workman ? If so, with what details ?"

The cause of the workmen is alleged to have been espoused by the Union which came into existence on the 11th December, 1961. This Union was registered under the Trade Unions Act. The stand of the management was that there did not exist any industrial dispute between it and the workmen. This assertion was supported by an affidavit filed by Nand Lal, who purported to represent 105 workers of the Distillery. It was stated in the affidavit that the demands made by the Union were not supported by the workmen. On behalf of the Union, a statement was made by one Kashyap, that out of 100 workers employed in the Distillery, 42 were members of the Union of which he was the President.

In this situation, the Tribunal thought it advisable to determine the questions of jurisdictoin because it was of the view that if there was no industrial dispute, it would have no jurisdiction to decide the same. Accordingly, the Tribunal framed two issues—

"(1) Is the reference invalid because there existed no industrial dispute between the management and its workmen ?

(2) What is the effect of the applications presented by the workmen praying for the demands in the reference to be rejected ?"

Both the President of the Union as well as the Management led evidence on these two issues. On consideration of the evidence led, the Tribunal came to the following conclusion:—

" * * *

It is thus abundantly clear that neither at the date of reference nor at the time the charters were issued, the demands in question were supported by the workers of the respondents or by any substantial number of them. The demand notices themselves were issued under the signatures of the President of the Union. But there is not an iota of evidence to show that the general body of the Union authorised the President or any of its other office bearers to make the demands and issue the charters. Neither the President nor the Secretary has even stated that the demands were raised in any meeting of the Union or that it was decided to issue the demand notice. After the evidence led by the management, the onus shifted on to the Union to show that the demands did have the backing of its members, that the members formed a substantial number of the workmen and that they had authorized the President to issue the demand notices. In the absence of any definite particulars as to the membership of the Union, and its representative character, and in the absence of anything to show that it was decided by the members of the Union by resolution or otherwise to make the demands, the dispute raised cannot be regarded as industrial dispute as defined under the Act. The unilateral and self-sought action of the President in issuing the charters would not amount to demands made by the workmen and cannot be deemed to have raised industrial dispute between them and the management of the distillery.

For all these reasons, I decide the issues in favour of the management and hold that the reference was not validily made and the Tribunal has no jurisdiction to proceed with it on merits."

Against the award, the workmen of the Karnal Distillery Company, Limited, Karnal, as represented by the Karnal Distillery Workers Union Registered, Karnal, through Shri L. R. Kashyap, its President filed a petition under Articles 226 and 227 of the Constitution of India. This petition came up for hearing before a learned Single Judge of this Court. The learned Single Judge, after consideration of the various authorities cited, allowed the petition. It will be proper to set out the ultimate conclusion of the learned Single Judge in his own words:—

"* * * * *

The dispute in the present instance was of a collective nature as the reference itself clearly bears out, no case of individual workman being involved.

I am of the view that the dispute, in the present instance, is not an individual dispute and falls within the scope of sub-section (1) of section 10 of the Industrial Disputes Act. The Tribunal in holding the reference to be invalid committed a legal error which is apparent on the record and the award must accordingly be set aside. I would, accordingly, allow this petition with costs and quash the order of the Industrial Tribunal and direct that he should proceed to hear the dispute on merits."

In nutshell, the view of the learned Single Judge seems to be that it is only in the case of an individual dispute that it is open to the Tribunal to give a finding that there is no industrial dispute and consequently the reference to it is invalid. But otherwise the Tribunal has no jurisdiction to hold that there is no industrial dispute where the dispute referred to it for settlement is of a colletcive nature and by the terms of reference cannot be said to be an individual dispute.

It is this decision of the learned Single Judge, the correctness of which has been challenged by the Management before us. The contention of the learned counsel for the Management is that there has to be a dispute at the time of the reference before a Tribunal could have jurisdiction to adjudicate upon the same. If on the date of the reference according to the learned counsel, there did not exist a dispute, the Tribunal will have no jurisdiction to determine the same. Under section 10 of the Act, a Tribunal can only decide an industrial dispute and the Government can only refer an

industrial dispute for decision if it did exist on the date of the reference. Therefore, it appears to us that before a Tribunal can proceed to determine an alleged dispute on the merits, it has got to determine, if an objection is raised, whether there is or there is not an industrial dispute. Section 2(k) of the Act defines the 'industrial dispute' in these terms—

> " "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; "

And Section 10 invests an appropriate Government with the power to refer that dispute for adjudication either to a Board for promoting a settlement or to a Court for inquiry or to a Labour Court or to a Tribunal. There can be no quarrel with the proposition that the reference by Government is an administrative act. But it does not mean that whenever Government takes a decision whether or not there is an industrial dispute, that decision is conclusive so far as the Tribunal is concerned. The Tribunal constituted under the Act can only entertain an industrial dispute. What is an industrial dispute has been defined in Section 2(k) of the Act; and if what is referred to the Tribunal is not an industrial dispute, the Tribunal *per se* would have no jurisdiction to determine the same. Therefore, on first principles, it must be held that it is open to the Tribunal to determine whether a dispute referred to it is or is not an industrial dispute. It is not disputed and indeed it could not be, in view of a catena of the decisions of the highest Court in India, namely, the Supreme Court, that an individual dispute is not an industrial dispute. Wherever the Tribunals have come to that finding, the Supreme Court has upheld that finding and has not taken the view that once a reference is made, it is outside the jurisdiction of the Tribunal to question whether there is or there is not an industrial dispute. If the Tribunal can determine whether there is no industrial dispute in the case of individual dispute, we see no reason why the Tribunal cannot determine even in the case of a collective dispute that in fact there is no dispute. The present case is a case of the second class and it fully demonstrates the falsity of the argument urged on behalf of the President of the Union and accepted by the learned Single Judge. The evidence recorded by the Tribunal

discloses that not a single workman of the Management came forward to state that there was any dispute between the workmen and the Management. Not only that not even a single employee, whose services had been dispensed with, came to support the claim of the President of the Union that there was an industrial dispute between the workmen and the management. On the contrary, all the workmen, who filed their affidavits before the Tribunal, categorically stated that no dispute between them and the management existed. Thus it appears to us that the very basis, on which the Tribunal could proceed, namely, that there was an industrial dispute, did not exist. The law presupposes the existence of an industrial dispute before the Tribunal could proceed to adjudicate the same. Therefore, whenever a question arises whether there is or there is not an industrial dispute, the Tribunal has, in our opinion, the jurisdiction to decide the same. As already stated, in the case of an individual dispute,it has been held time out of number by the Supreme Court of India that in the case of an individual dispute, there is no industrial dispute and the Tribunal has no jurisdiction to determine the same. In *The Bombay Union of Journalists and others* v. *The 'Hindu'* (1), the Tribunal, by its award, rejected the reference holding that it had no jurisdiction to adjudicate upon the dispute submitted to it by the Government of Bombay. On an appeal to the Supreme Court with special leave against the award of the Industrial Tribunal, Bombay, the decision of the Industrial Tribunal, that it had no jurisdiction to adjudicate upon the dispute submitted to it by the Government of Bombay, was upheld. In our opinion, this decision clinches the matter so far as this Court is concerned.

For the reasons recorded above we are clearly of the view that the Tribunal was right in holding that there was no industrial dispute which called for adjudication and the learned Single Judge was in error in upsetting the decision of the Tribunal and requiring it to determine the alleged dispute. We accordingly allow this appeal, set aside, the decision of the learned Single Judge and restore that of the Tribunal with no order as to costs.

MEHAR SINGH, C.J.—I agree.

B.R.T.

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(1) A.I.R. 1963 S.C. 318.