**The Workmen Of Firestone Tyre And Rubber Co. Of**

**India Vs. The Management & Ors.**

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**Introduction**

The Industrial Disputes Act, 1947 was initiated in April 1947 to regulate industrial disputes and make them easily accessible to workers. The main intention behind it was to ensure a level playing field between employers and workers so that no party is exploited and peace and harmony are maintained.

The Act also gives provisions and procedural guidelines for investigations of the disputes and the powers conferred to the regulating bodies.

**Background**

The Trade Dispute Act, 1929 was introduced in 1929 for the primary aim of the settlement of industrial disputes arising between people involved in an industrial organization. This Act gave the trade unions a legitimate legal status but, failed to create a favourable atmosphere in the industry to settle the disputes amicably.

However, later this defect was overcome during the Second World War (1938-1945) by empowering under Rule 81-A, of the Défense of Indian Rules which stated that industrial disputes were to be referred to an adjudicator for settlement. With the termination of the Second World War, Rule 81-A was to be rescinded on 1st October 1946, but it was kept alive by recourse to Government’s Emergency Powers. This main provision was hence retained in the new act which is currently called the Industrial Disputes Act, 1947.

**Constitutional and Statutory Provisions Discussed**

Amendment of Industrial Tribunal Act in 1971

Section 11A of the Tribunal Act

**Facts**

The responding company made tyres in Bombay and distributed them from a distribution centre in Delhi. The company's employees were in a conflict with their employer over the firing of their employees based on the findings of a domestic investigation.

During the pendency of the Dispute, the Industrial Tribunal Act was amended in 1971, and Section 11A was added, giving the Industrial Tribunal Appellate Authority over the Domestic Enquiry judgment.

The Tribunal ruled in favour of the Employer, refusing to apply Section 11A retroactively in this case.

The decision was then taken to the Supreme Court for review. The petitioners' lawyer contended that Section 11A applies not just to cases filed after December 15, 1971 (the day the act was passed), but also to all pending cases prior to that date, as the legislation's wordings strongly suggest. The respondents, on the other hand, claimed that the change should not be approved in this case because it was intended for all future cases. Both parties interpreted Section 11A in different ways.

**Issues**

What is the proper interpretation of section 11A of the Industrial Disputes Act and whether it has a retrospective application (whether it applies to industrial disputes pending as on 15-12-1971)

If the amended act had a retrospective application, that is, if it applied to cases that were pending before it was passed

**Arguments Advanced**

**Argument by counsel for petitioners**

It is now obligatory on an employer to hold a proper domestic inquiry in which all material evidence will have to be adduced. When a dispute is referred for adjudication and it is found that the domestic inquiry conducted by the management is defective or if it is found that no domestic inquiry at all had been conducted, the order of discharge or termination passed by the employer becomes unjustified and the Labour Tribunals have no option but to direct the reinstatement of the workmen concerned.

Even in cases where a domestic inquiry has been held and finding of misconduct recorded, the Labour Tribunals have now full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct and if the inquiry proceedings are held to be proper and the finding of misconduct is also accepted, the Tribunal has no power to consider whether the punishment of dismissal or discharge was necessary and the Tribunal can give any other relief to the workman.

In cases where an employer had not conducted any inquiry or when the inquiry conducted by him is held to be defective, the employer will not be given an opportunity to adduce evidence before the Labour Tribunal for justifying his action.

If an employer does not conform to the provisions of the Standing Orders, he commits illegality and order passed, which is illegal, has only to be straightway set aside by the Tribunal.

Only such evidence, which could and should have been produced by the parties in the domestic inquiry, is not allowed to be adduced before the Tribunal

According to the learned Counsel, Section 11A applies not only to references, which are made on or after 15-12-1971 but also to all references already made and which were pending adjudication on that date. It is pointed out that Section 11A has been incorporated in Chapter IV of the Act dealing with procedure, powering, and duties of authorities. Accordingly, Section 11A deals with matters of procedure. Applying the well-known canon of interpretation, procedural laws apply to pending proceedings also.

 No right, much less any vested right, of the employers have been taken away or affected by Section 11A. Considerable stress has been laid on the use of the expressions ‘has been referred’ occurring in Section 11A, as conclusively indicating the applicability of the section even to disputes already referred.

Assuming that an employer has a right to adduce evidence for the first time before the Tribunal that right ensures to him only after the Tribunal had adjudicated upon the validity of the domestic inquiry. It cannot be characterized even as a right, much less a vested right, because it is contingent or dependent upon the Tribunal’s adjudication on the domestic inquiry. The Tribunal, when it adjudicates a dispute on or after 15-12-1971, has to exercise the powers conferred on it by Section 11A, even though the dispute may have been referred before that date. Hence it is clear that the section applies even to all proceedings pending adjudication on 15-12-1971.

**Arguments for respondents:**

The council took the support of the common-law relationship of master and servant and stated that the right of an employer to manage his affairs in his own way provided he does not act arbitrarily is kept intact by this amendment.

An employer is expected to hold a domestic inquiry before an order of dismissal or termination is passed. He is also bound to follow, in such cases, the principles of natural justice and the procedure laid down by the relevant Standing Orders.

The Tribunal will not interfere with the finding recorded by an employer in a proper inquiry merely on the ground that it would have come to a different conclusion. The punishment to be noted out was entirely within the powers and jurisdiction of an employer and it was no part of the jurisdiction of a Tribunal to decide whether the said punishment was justified except in very rare cases where the punishment imposed is grossly out of proportion, so as to suggest victimization or unfair labor practices.

But Under Section 11A, after the Tribunal holds that the inquiry has been conducted properly by an employer and that the finding of misconduct is correct, it has jurisdiction to consider whether the punishment requires modification. If it holds that the punishment has to be modified, it has the power to do so and award a lesser punishment. Section 11A comes into effect only at the time when the Tribunal considers the punishment to be imposed.

While previously the Tribunal had no power to interfere with the punishment, it is now clothed with such a power. This is the only modification regarding the powers of the management that has been introduced by Section 11A.

With reference to section 33 of the Act, the proper way of interpreting Section 11A would be to hold that it comes into play after a Tribunal bar held the inquiry proceedings conducted by the management to be proper and the finding of guilt justified. It is then that the Tribunal can consider whether the punishment imposed is justified. If it is of the opinion that the punishment is not justified, it can alter the same.

The retrospective operation should not be given unless it appears very clearly by the terms of the section or arise by necessary and distinct interpretation. The employers would have molded their behavior according to the principles laid down by a series of decisions and if the rights recognized in an employer are to be taken away, that can be done so only by a clear expression to that effect; or such intention to take away or interfere with those rights must appear by necessary intendment.

 The words of the section clearly show that it applies only to disputes in respect of which a reference is made after the section has come into force I.e. 15-12-1971. The expressions ‘have been referred’ in the section only signify that on the happening of a particular event, namely, a reference made in the future, the powers are given to the Tribunal, whatever they may be, can be exercised.

**Judgment**

**Ratio Decidendi:**

The Court observed that the right to take disciplinary action and to decide upon the degree of punishment is only a part of the managerial functions. However, if a dispute is referred to the Tribunal, the tribunal is equipped with the power to see if the employer’s action is justified. According to **Indian iron and steel Co. Ltd. case,**the court can interfere in the dispute (i) when there is want of good faith; (ii) when there is victimization or unfair Labour practice, (iii) when the management has been guilty of an error or a violation of the principles of natural justice or (iv) when findings are completely baseless and perverse as per the materials

When a proper inquiry has been held by an employer, and the finding of misconduct is deemed to be a possibility the Tribunal, as an appellate body has no jurisdiction to oversee a judgment and go beyond the decision of the employer. The interference with the decision of the employer will be justified and imposed only when the findings arrived at the inquiry shows that management is guilty of exploitation, unfair labour practice, or malicious intentions.  In the case of ***Madras v. workers of Buckingham and Carnatic company Ltd***., it was held that decision of the Management in relation to the charges against the employee will not prevail-if (a) there is want of bona fide, or (b) it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (c) there is a basic error of facts or, (d) there has been a perverse finding on the materials.

In cases when no inquiry has been held by an employer/if the inquiry held is defective, the Tribunal can satisfy itself about the legality of the order only when it gives an opportunity to the employer and employee to present evidence before it. It is up to the employer to adduce/present evidence for the first time justifying his action and to the employee to adduce evidence contra.

The Court also opined that the effect of an employer not holding in inquiry is that the Tribunal would not have to consider only whether there was a prima facie case. The Court will the opine on the issue about the merits of the impugned order of dismissal and on the evidence adduced before it which will decide for itself whether the misconduct alleged is proved or not.

 In cases like these, the idea of exercising managerial functions does not arise at all and cannot be disputed.

The Tribunal can get jurisdiction to consider the evidence placed before it for the first time only, if no inquiry has been held or after the inquiry conducted by an employer is found to be defective in justification of the action.

Adducing evidence for the first time: An employer, who wants the opportunity of adducing evidence to justify his actions for the first time before the Tribunal, should ask for it at the appropriate stage. If asked, the Tribunal has no power to refuse since the giving of an opportunity to an employer is in the interest of both the management and the employee and to come at an equitable decision about the alleged misconduct.

Punishment: The bench stated that once the misconduct is proved (either in the inquiry or by the evidence placed), the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is extremely harsh and exploitative. The Tribunal can consider not only whether the finding of misconduct recorded by an employer is correct, but can also differ from the said finding if a proper case is made out.

 Under section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge.

The Tribunal can also hold that the order of discharge or dismissal is not justified because the misconduct is not established by the evidence. To come to a conclusion the Tribunal is equipped to consider and judge the evidence for itself and it may hold that the misconduct is not proved or that the misconduct proved does not entail the punishment of dismissal. This is why Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points.

Materials on Record: According to the Court, the expression ‘materials on record’, occurring in the Act cannot be confined only to the materials which were available at the domestic inquiry. They must be held to refer to materials on the record before the Tribunal and they take in (1) the evidence was taken by the management at the inquiry/ proceedings of the inquiry, or (2) the above evidence with any further evidence before the Tribunal, or(3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence given by the workman.

In case an employer with a limited number of workmen may himself be a witness to misconduct committed by a workman, he will be disabled from conducting an inquiry against the workman because he cannot both be an inquiry officer and also a witness in the proceedings but he will certainly be entitled to take disciplinary action for which role he can file a charge sheet and impose the necessary punishment, after calling for explanation, without holding any prior inquiry. This will be a case where no inquiry at all has been held by an employer. But the employer will have sufficient material available with him which could be produced before any Tribunal to satisfy it about the justification for the action taken

The principle is well established that a retrospective operation is not to be given to a statute so as to impair an existing right. This is the general rule. But the legislature is competent to pass a statute so as to have retrospective operation, either by clearly expressing such intention or by necessary and distinct intendment.

That procedural law has always been held to operate even retrospectively, as no party has a vested right in the procedure

**Obiter Dicta:**

The Court emphasized that before imposing the punishment, an employer is expected to conduct a proper inquiry as regulated by the Standing Orders, and by the principles of natural justice. The inquiry cannot be an empty formality.

The mere fact that no inquiry has been held or that the inquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way of performing this duty is for the Tribunal to take evidence of both sides in respect of the alleged misconduct

A case of defective inquiry stands on the same footing as no inquiry.

It cannot be recognized that the Tribunal should straightaway reinstate an employee if itis found that no domestic inquiry or if it is defective.

It is open to the Tribunal to deal with the validity of the domestic inquiry if one has been held as a preliminary issue. If it’s finding on the subject is in favor of the management, then there will be no occasion for additional evidence being cited by the management. However if the finding on this issue is against the industry’s management, the Tribunal allows the employer to present extra evidence that can justify his actions

Even after Section 11A, the employer and employee can adduce evidence regarding the legality or validity of the domestic inquiry, if one had been held by an employer.

There is no provision either in this statute or in the Act which states that an order of dismissal or discharge is illegal if it is not preceded by a proper and valid domestic inquiry.

It was held that if the inquiry was defective or no inquiry had been held, as required by the Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify, on evidence as well that its order of dismissal or discharge was proper. (The industrial Employment (Standing Orders) Act 1946 applies only to those industrial establishments which are covered by Section 1(3). But the field of operation of the Act is much wider and it applies to employers who may have no standing orders at all.)

The Tribunal, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute when considering the correctness or otherwise of an order passed by a subordinate body.

Section 11A applies only to disputes which are referred for adjudication after the section has come into force since the proviso in it refers to “in any proceeding under this section”.

**Conclusion**

The scheme of the section and particularly the wording of the Proviso hence indicate that Section 11A does not apply to disputes which had been referred before 15-12-1971. The section applies only to disputes which are referred for adjudication on or after 15-12-1971 and not before the said date. To the extent that the decision of the Labour Court in the three orders (Nos. 1995 of 1972, 1996 of 1972 and 2386 of 1972, are contrary to our decision on both the points, they are set aside and the appeals allowed to that extent. The Tribunal and the Labour Courts concerned in all these appeals will proceed with the adjudication of the disputes in accordance with the views expressed in this judgment.