

the Payment of Wages Act, read along with the Industrial Disputes Act, shows that there is nothing to prevent such an agreement being made between an employer and employee, and much less to make such agreement illegal and prohibited by the Payment of Wages Act. Section 23 of the Payment of Wages Act also, in our opinion, does not support the argument of the appellant. It only prevents an employee from contracting away his rights which are given by the Payment of Wages Act. It does not prevent him from entering into an agreement advantageous or beneficial to him.

It was next contended that under s. 15 of the Payment of Wages Act specific machinery is provided to enforce payment of wages and the Tribunal set up under the Industrial Disputes Act will not have jurisdiction to deal with this matter. In our opinion this argument is unsound. It need not however be considered further because it presupposes that the claim for bonus as made by the employees falls under the definition of wages. Having regard to our conclusion on the first point about the nature of the bonus claimed, this question does not arise.

As no other questions were argued before us in this appeal, the appellant's contentions are rejected. The appeal fails and is dismissed. The appellant to pay the costs of respondent 2.

Appeal dismissed.

Agent for the appellant: *P. K. Chatterjee.*

Agent for respondents Nos. 1 and 2: *P. K. Bose.*

ROBERTS MCLEAN & CO. LTD.

v.

A. T. DAS GUPTA AND OTHERS.

[SIR HARILAL KANIA C. J., SIR FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN and MUKHERJEA JJ.]

Industrial Disputes Act (XIV of 1947), s. 2 (k), ss. 10, 15, 19—Dispute as to reinstatement of discharged employees—Whether.

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H. W. Heilgers & Co.

v.

N. C. Chakravarti and Others.

Kania C. J

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1949 *industrial dispute—Jurisdiction of tribunal—Operation of award—Period of one year—Commencement of period—Power of tribunal to award salary from date of discharge of employees.*
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Roberts McLean and Co. Ltd.

v.
A. T. Das Gupta and Others. The maximum period of one year mentioned in s. 19(3) of the Industrial Disputes Act, 1947, starts from the date of the award and does not cover the period antecedent to the award.

The power of the Government under s. 19(3) of the Industrial Disputes Act, 1947, to make the award of an industrial tribunal operative for a period not exceeding one year thereafter, is an independent power and such extension does not in any way affect the jurisdiction or powers of the tribunal.

A dispute as to reinstatement of a discharged employee is an industrial dispute and an industrial tribunal has therefore jurisdiction to adjudicate upon such a dispute.

Western India Automobile Association v. Industrial Tribunal, Bombay, and Others [1949] F.C.R. 321 followed.

APPEAL from the High Court of Judicature at Calcutta: Civil Appeal No. XIX of 1949.

This was an appeal under the Federal Court (Enlargement of Jurisdiction) Act, 1947, from a judgment and decree of the High Court of Calcutta (Sir Trevor Harries C.J. and Chakravarthi J.), dated 24th September, 1948, dismissing an application made by the appellants to the said High Court in the exercise of its Ordinary Original Civil Jurisdiction for the issue of writs of certiorari and prohibition against the respondents in the matter of an adjudication under the Industrial Disputes Act, 1947. The material facts are set out in the judgment.

This appeal was heard along with appeals Nos. VIII, IX, XI, XII, XIV, XVI and XX of 1949.

A. N. Roy for the appellants.

Sir S. M. Bose, Advocate-General of West Bengal, (H. K. Bose with him) for respondent No. 1.

S. K. Sanyal and P. Burman for respondent No. 2.

Cur. adv. vult.

1949. March 30. The judgment of the Court was delivered by

KANIA C. J.—This is an appeal from a judgment of the High Court of Judicature at Fort William in Bengal. The material facts are these:

The appellant (petitioner) is a company incorporated under the Indian Companies Act and carries on business, amongst other places, at No. 101 Netaji Subhas Road, Calcutta, within the original civil jurisdiction of the High Court at Calcutta. By an order of the Government of West Bengal dated the 15th May, 1947, Mr. Waight was appointed under the Industrial Disputes Act, 1947, the Tribunal for adjudication of a dispute between the petitioner and the Roberts McLean Employees' Union, having its office in Calcutta. Notices of proceeding with the adjudication were issued in due course. By an order of the Government of West Bengal dated the 1st September, 1947, the order of the 15th May, 1947, was amended so as to make the reference to Mr. A. T. Das Gupta. The said Tribunal proceeded with the matter and Mr. A. T. Das Gupta made his award on the 10th January, 1948. On or about the 22nd January, 1948, Mr. S.K. Chatterjee, respondent No. 2 to the petition, by an order made in the name of the Government of West Bengal, ordered that the said award shall bind the petitioner and the Union and shall remain in force for a period of one year with effect from the said date. According to the direction of the said Mr. Chatterjee, a copy of the said order was published in the Calcutta Government Gazette. The said award, *inter alia*, directed the appellant to reinstate their discharged employees with effect from the 17th February, 1947, on which date the petitioner had discharged them after giving them one month's pay in lieu of notice. The award further directed that two persons named therein be paid, as compensation, their basic salary and dearness allowance from the date of their discharge to the end of September, 1947. There were other directions about reinstatement of certain persons and payment to others. The petitioner contended that the award was made without jurisdiction and filed a petition in the High Court at Calcutta praying that Mr. Chatterjee be directed to forbear from giving effect to the award and for writ of prohibition

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against Mr. Chatterjee from acting under the said award and a writ of certiorari for bringing up the records and proceedings before Mr. Das Gupta for quashing the same. There were prayers for an injunction against Mr. Chatterjee proceeding with the same award. The matter came for hearing before Sir Trevor Harries C. J. and Mr. Justice Chakravarthi, who, after dealing with the points urged before them, dismissed the same. From that judgment an appeal has been preferred and heard by this Court. Before us only two questions were urged. One was in respect of the jurisdiction of the Tribunal to order reinstatement. The other was that the award could not be given a retrospective effect so as to be in operation for a period of more than one year.

Our judgment delivered to day in the matter of the *Western India Automobile Association* case⁽¹⁾ covers the first question about reinstatement. For the reasons mentioned in that judgment the appellant's contentions on this point fail. The contention on the second point is based on a misreading of ss. 15 and 19 of the Industrial Disputes Act. It confuses the question of the jurisdiction of the Tribunal with the power of the Government to make the award operative for a period of one year. The scheme of the Act clearly is that the Tribunal has to determine the dispute referred to it and therefore has jurisdiction to determine and make the award up to the date it passes its order. The award so made will acquire a binding effect on the order of the Government made under s. 15. The power to make the award operative for a period not exceeding one year thereafter which is given to the Government under s. 19 (3) of the Industrial Disputes Act, is an independent power and such extension does not, in any way, affect the jurisdiction or powers of the Tribunal. There is no justification for reading the provisions found in ss. 10, 15 and 19 of the Industrial Disputes Act as providing one maximum period of *twelve* months. The maximum period of one year mentioned in s. 19 (3) starts from the date of the award and does not cover the period antecedent to the award. The result is that

(1) [1949] F.C.R. 821.

the two contentions urged in this appeal fail and the appeal is dismissed. The appellants to pay the costs of the Employees' Union.

Appeal dismissed.

Agent for the appellants: *A. N. Mitter.*

Agent for respondents Nos. 1 and 2: *P. K. Bose.*

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*Roberts McLean
 and Co. Ltd.*
 v.
*A. T. Das Gupta
 and Others.*
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Kania C. J.

SHAMNAGORE JUTE FACTORY LTD.

v.

S. M. MODAK AND ANOTHER.

1949
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[SIR HARILAL KANIA C.J., SIR FAZL ALI,
 PATANJALI SASTRI, MEHR CHAND MAHAJAN and
 MUKHERJEA JJ.]

Industrial Disputes Act (XIV of 1947), ss. 2 (vi), 7—Payment of Wages Act (IV of 1936), ss. 15, 22 (d)—'Industrial dispute'—Lock-out of employees—Question whether lock-out was justified—Payment of wages during period of lock-out—Whether industrial disputes—Jurisdiction of industrial tribunal—Payment of Wages Act, effect of.

The question whether the employers were justified in locking out their workmen is an industrial dispute. A dispute relating to the payment of wages during the period of lock-out is also an industrial dispute.

Section 22 (d) of the Payment of Wages Act, 1936, only prevents a suit for wages. It does not exclude the jurisdiction of a tribunal set up under s. 7 of the Industrial Disputes Act, 1947, to adjudicate upon a claim for payment of wages.

APPEAL from the High Court of Judicature at Calcutta: Civil Appeal No. XIV of 1949.

This was an appeal under the Federal Court (Enlargement of Jurisdiction) Act, 1947, from a judgment and decree of the High Court of Calcutta (Sir Trevor Harries C. J. and Chakravarthi J.) dated 24th September, 1948, dismissing an application made by the appellants to the said High Court in the exercise of its Ordinary Original Civil Jurisdiction for the issue of writs of certiorari and prohibition and for an order which was in effect one under s. 45 of the Specific Relief Act against the 1st respondent and others in the