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We are therefore of the opinion that no question of the jurisdiction of the Industrial Tribunal is involved in the case so as to entitle the High Court to issue any of the high prerogative writs in the case. The Tribunal has jurisdiction to adjudicate on the dispute and it can be trusted to do its duty and it cannot be said that it will give the reinstatement relief unless it thinks it is necessary to do so.

The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

Agent for the appellants: *Rajinder Narain.*

Agent for respondents Nos. 1 and 2: *Ranjit Singh Narula.*

Agent for respondent No. 3: *Gobind Saran Singh.*

Agent for the Intervener: *P. A. Mehta.*

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THE INDIA PAPER PULP CO. LTD.

v.

THE INDIA PAPER PULP WORKERS' UNION AND ANOTHER.

[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. 7, 10—Industrial dispute—Reference to tribunal—Form of reference—Construction of order of reference—Dispute as to reinstatement and compensation for wrongful dismissal by discharged workmen—Whether "industrial dispute"—Jurisdiction of tribunal to adjudicate such disputes.

An order made by the Governor under ss. 7 and 10 of the Industrial Disputes Act, 1947, ran as follows: "Whereas an industrial dispute has arisen between the India Paper Pulp Co. Ltd. and their discharged workmen whose names are mentioned in the list annexed hereto as represented by the India Paper Pulp Workers' Union and it is expedient that the said dispute should be referred to the Tribunal constituted under the Industrial Disputes Act, 1947, the Governor is pleased under ss. 7 and 10 of the said Act to appoint Mr. A to be the Tribunal for adjudication of the said dispute":

Held, by the full Court, that s. 10 of the said Act does not require that the particular dispute should be mentioned in the order and it is sufficient if the existence of a dispute and the fact that the dispute is referred to the tribunal are clear from

the order. The order in question, though not quite satisfactory, was not therefore defective, and, inasmuch as the order made express reference to s. 10 of the Act it could reasonably be construed as a reference to the tribunal of the dispute generally referred to in the first part of the order.

Held also, following *Western India Automobile Association* v. *Industrial Tribunal, Bombay, and Others* (1), that disputes relating to reinstatement of discharged workmen and claims for compensation for wrongful dismissal made by them are disputes connected with "non-employment" and consequently industrial disputes within the meaning of s. 2 (k) of the Industrial Disputes Act, 1947, and a tribunal constituted under the said Act has jurisdiction to adjudicate upon such disputes.

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

This was an appeal under the Federal Court (Enlargement of Jurisdiction) Act, 1947, from a judgment and decree of the Calcutta High Court (Sir Trevor Harries C.J. and Chakravarthi J.) dated 24th September, 1948, dismissing an application made by the appellants in the Ordinary Original Civil Jurisdiction of the said High Court for writs of certiorari and prohibition, prohibiting the 2nd respondent from exercising jurisdiction in respect of certain disputes between the company and its discharged workmen which had been referred to the said respondent for adjudication as an Industrial Tribunal under the Industrial Disputes Act, 1947, and for orders under s. 45 of the Specific Relief Act. Mr. Justice Majumdar before whom the application came on for hearing directed the parties to request the Chief Justice to form a Bench to hear the application. The application was accordingly heard by Sir Trevor Harries C.J. and Chakravarthi J. and ultimately dismissed. The appellants thereupon appealed to the Federal Court under the Federal Court (Enlargement of Jurisdiction) Act, 1947. This appeal was heard by the Federal Court along with the Civil Appeals Nos. IX, XI, XII, XIV, XVI, XIX and XX of 1949 as the same questions were involved.

Sachin Chaudhuri (*Samarendra Nath Mukherjee* and *P. P. Ginwalla* with him) for the appellants. The order of the Governor dated 3rd January, 1948, only appoints a Tribunal. It does not refer any dispute for

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adjudication. It does not even mention a dispute or the nature of the dispute. There are no words of reference. The words "whereas it is expedient that the said dispute should be referred to a tribunal" form part of the preamble. They are not operative words. They do not occur in the operative part of the order. The dispute is not an "industrial dispute." Discharged employees are not "workmen". Disputes between such employees and the employers is not an "industrial dispute." Once an employee has been discharged, rightly or wrongly, he ceases to be "a workman" and the dispute between him and his employer is not an "industrial dispute". He has to seek his remedy in the ordinary courts. The legality of the dismissal is not a question for the Tribunal. If there is a dispute, only such dispute could be referred, not the question of dismissal. The validity of the dismissal is not a question "connected with the employment or non-employment" of the workman or the terms of his service. The expression "employment or non-employment" must not be read disjunctively as referring to two separate matters. "The" is not repeated before "non-employment." Assuming that a dispute about dismissal is an industrial dispute, the Tribunal has no jurisdiction to order reinstatement. Such a relief is not permissible under the general law. Personal contracts of service cannot lightly be interfered with. The Act must be construed so as to be consistent with general law: Maxwell's Interpretation of Statutes, p. 163. Legislature must not be intended to have departed from these well recognised principles unless the statute is clear about it. Again, there is no machinery to enforce an order for reinstatement. Orders which cannot be enforced should not be passed. Employer must have a right to terminate a contract of service. He cannot be forced to employ a person for ever. The Act does not contemplate the creation of a new contract of service when the employer is unwilling to enter into it. Forcing an employer to employ against his will is always to be deprecated. The object of the Act is not to help labour alone, but to settle disputes equitably in accordance with law and justice and the rights of the parties.

The decision in *R.* v. *National Arbitration Tribunal; Ex parte Horatio Crowther and Co., Ltd.* (1), lays down the law correctly and is directly applicable to this case. The legislature has made ample provision against victimization and protection of labour unions in the Trade Unions Act, 1926, *vide* ss 28K and 32A. The object and scope of the Industrial Disputes Act, 1947, is merely to settle disputes between employer and employees.

K. M. Munshi (*S. Krishnamoorthi Aiyar* with him) for the appellants in Civil Appeal No. XX of 1949 stressed and elaborated the following points: (i) That discharged employees were not "workmen"; (ii) that a claim for reinstatement was not an industrial dispute; (iii) that a dispute relating to employment required as a pre-requisite a subsisting contract of employment; (iv) that "non-employment" implied failure to employ where there was an obligation to employ; (v) that in the absence of express words in the Act the power to decide disputes should not be construed as covering (a) a dispute as to refusal to employ or re-employ where the contract has been validly terminated, (b) a right to create a relationship of employment where no contract subsists, in other words, to reinstate; (vi) that discharge of some employees cannot give rise to an industrial dispute between the employer and the other employees. (Counsel referred in detail to the history of labour legislation in Australia and the United States of America in support of his contentions).

Sir S. M. Bose, Advocate-General of West Bengal (*H. K. Bose* with him) for respondent No. 2. The definition of "industrial dispute" is wide enough to cover disputes with regard to dismissal and reinstatement. The word "non-employment" evidently includes dismissal. It must have been purposely inserted for including questions of dismissal and reinstatement. The jurisdiction of the Tribunal is stated in ss. 10 and 15 of the Act. No limitation has been imposed on its jurisdiction. It has power to do what it thinks just. In Australia the powers were enumerated and this caused some difficulty there. *Crowther's* case(1) is not applicable to India at all. The effect of that decision is that there

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is jurisdiction to adjudicate but no power to give the particular relief of reinstatement.

The *ratio decidendi* of the decision is wrong. Assuming it is right, it is not applicable to India. The Indian Act provides for a penalty for non-compliance with the award. The main ground on which *Crowther's* case(1) is based does not, therefore, exist in India. The Act also confers power expressly to vary the terms of the contract between the parties. Freedom of contract has been curtailed by the Act in several ways.

P. K. Sanyal and *P. Burman* for respondent No. 1. The workmen were discharged during the course of the dispute. They are therefore "workmen" within the definition contained in the Act. The High Court has found to this effect. This was not disputed before the Tribunal.

Cur. adv. vult.

March 30. The judgment of the Court was delivered by

Kania C. J.

KANIA C.J.—This is an appeal from a judgment of the High Court of Judicature at Fort William in Bengal and involves principally the question of the reinstatement of 109 employees of the appellant company, who were discharged after notice was given to them on the 4th December, 1947. Their service was terminated as at the end of January, and their full pay for the months of December, 1947, and January, 1948, was paid to them.

The relevant facts are these :—On the 10th September, 1946, the employees of the appellant company formed into an Union which was registered on the 3rd December, 1946. It was alleged that almost all the employees of the company became members of the Union. On the 24th December, 1946, the Union submitted to the company a memorandum of the demands of the employees, for the amelioration of their condition. The company declared a lock-out on the 23rd February, 1947, and negotiations through the Labour Commissioner for re-opening the factory having failed, the Government of West Bengal, on 6th May, 1947, referred the dispute to Mr. Simpson and subsequently to Dr. Waight for adjudication. The lock-out was withdrawn. The proceedings before Dr. Waight ended

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with his award on the 22nd August, 1947. The workmen and the Union alleged that the company failed and neglected to implement the terms of the award and started transferring the workmen from department to department to victimize those who had actively pressed their demands for acceptance. On the 28th November, 1947, the company asked the President of the Union to come and discuss on the 4th December, 1947, certain specific matters as mentioned in their letter, at the factory office. That did not show that there was any excess labour. The President of the Union could not attend the meeting and the company gave notice of termination of employment to 109 workmen. The Union and workmen contended that the allegation of excess labour was *mala fide* and it was a case of victimization and adoption of unfair labour practice. They claimed that the discharged workmen be reinstated without break of service and for compensation. Dispute having thus arisen between the company and the Union and workmen, the Government of West Bengal issued the following order on the 3rd January, 1948:

"CALCUTTA

3rd January, 1948.

Whereas an industrial dispute has arisen between the India Paper Pulp Co., Ltd., managing agents, Messrs. Andrew Yule & Co., Ltd., 8 Clive Road, Calcutta, and their discharged workmen whose names are mentioned in the list annexed hereto, as represented by the India Paper Pulp Workers' Union, and it is expedient that the said dispute should be referred to the Tribunal constituted under the Industrial Disputes Act, 1947, the Governor is pleased under ss. 7 and 10 of the said Act to appoint Mr. A. T. Das Gupta, Additional District Judge, to be the Tribunal for adjudication of the said dispute.

The said Tribunal shall meet at Writers Buildings on such dates as the said Mr. Das Gupta, Additional District Judge, shall direct."

Mr. Das Gupta proceeded to hold his sittings within the limits of the ordinary original civil jurisdiction of

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the High Court at Calcutta when the discharged former workmen of the company claimed reinstatement and compensation. The company contended that Mr. Das Gupta had no jurisdiction to adjudicate on the claim for reinstatement and/or compensation. Mr. Das Gupta in spite of that notice of the company's contention notified his intention to hold a sitting of the Tribunal and on the 11th March, 1948, the appellants filed a petition in the High Court for the issue of a writ of prohibition and a writ of certiorari prohibiting Mr. Das Gupta from exercising jurisdiction in respect of the claims of the workmen for reinstatement of, and payment of compensation to, the company's said discharged former workmen. There were also prayers for orders under s. 45 of the Specific Relief Act asking Mr. Das Gupta to forbear from awarding such reinstatement and/or compensation. When the petition came before Mr. Justice Majumdar, realising the importance of the matter, he directed the parties to request the Chief Justice to form a Bench to hear the petition. Sir Arthur Trevor Harries C. J. and Mr. Justice Chakravarthi thereafter heard the petition and dismissed the same. On the 14th November, 1948, the company asked for leave to appeal to this Court and the same having been granted, this appeal is filed here.

In the High Court the learned Judges considered that the High Court had no jurisdiction to issue the writs of prohibition and certiorari because the factory of the company in which reinstatement was claimed was outside its original civil jurisdiction, and the workmen also lived outside its jurisdiction. The Court however held that the clear words of s. 45 of the Specific Relief Act imparted jurisdiction to the Court to issue an order against Mr. A. T. Das Gupta who was holding his sittings within the original jurisdiction of the Court and who, if he proceeded with the reference, would consider and decide the question within the jurisdiction of the Court. Having regard to our decision on the question of the jurisdiction of the Tribunal it is not necessary to decide the question of jurisdiction of the Court to issue the writs of prohibition and certiorari.

On behalf of the appellants it was contended that there was no jurisdiction in the Industrial Tribunal to decide anything because, firstly, no dispute was referred to the Tribunal. This is admittedly a technical defence and is based on the wording of the order of the Government of West Bengal dated the 3rd January, 1948. In this connection it was pointed out that the order of the 3rd January, 1948, of the Government of West Bengal did not mention any industrial dispute. Secondly, the order, as worded, was only an order of appointment and there were no words of reference to the Tribunal. It was argued that the words "and it is expedient that the said dispute should be referred to a Tribunal " did not constitute a reference ; they were in the preamble and did not form an operative part of the order. The order is far from satisfactory and is not carefully drafted. Section 10 (1) of Act XIV of 1947 provides as follows :—"If any industrial dispute exists or is apprehended, the appropriate Government may, by an order in writing.....(c) refer the dispute to a Tribunal for adjudication." The section does not require that the particular dispute should be mentioned in the order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 10 of the Act however requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference. It is material in this connection to notice that in the order there is a reference not only to s. 7 but also to s. 10 of the Act and the order further goes on to say that the appointment is for adjudication of the said dispute. Section 7 empowers the appropriate Government to constitute one or more tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. If the order was only intended to establish a tribunal, the reference to s. 10 of the Act would be out of place. The express reference to that section in our opinion could be reasonably construed to constitute a reference to the Industrial Tribunal of the dispute, generally referred

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to in the first part of the order. In our opinion therefore this contention has no substance.

The question of jurisdiction of the Tribunal to order reinstatement is fully discussed in the judgment of the Court delivered to day in the *Western India Automobile Association* case(1). As the question of non-employment is an industrial dispute, the claim for compensation for wrongful dismissal, *i.e.*, non-employment, is, in our opinion, clearly a dispute in connection with non-employment. No other contentions were urged before us in the appeal.

The appellants' contentions being thus rejected, the appeal fails and is dismissed. The appellants to pay the costs of the first respondent.

Appeal dismissed.

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

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F. W. HEILGERS & CO.

v.

NAGESH CHANDRA CHAKRAVARTHI AND OTHERS.

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

Industrial Disputes Act (XIV of 1947), ss. 9, 10—Claim by employees for bonus for work done, annual bonus, and profit-sharing bonus—Reference of dispute to tribunal—Legality of reference—Stipulation for payment of such bonus—Whether illegal—Payment of Wages Act (IV of 1936), s. 2 (vi), ss. 20, 23—Definition of "wages".

Where the employees of a company claimed from the company bonus for work done during the war, an annual bonus equivalent to one month's pay for the years 1945 and 1946, and the introduction of a profit-sharing scheme which will give to the employees a profit-sharing bonus for future years and the dispute was referred for adjudication to the Industrial tribunal: *Held*, that these claims were not claims for "wages" within the meaning of the Payment of Wages Act, 1936, as the claims were not for an ascertained sum, and a stipulation to pay such

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