

THE STATE OF RAJASTHAN

v.

1954

March 17

THE MEWAR TEXTILE MILLS LTD.,
BHILWARA AND OTHERS.

[MEHR CHAND MAHAJAN C. J., MUKHERJEA,

S. R. DAS, VIVIAN BOSE and

GHULAM HASAN JJ.]

Industrial Disputes Act (Act XIV of 1947), s. 7(3) (a), and (b) as amended by s. 34 of the Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950)—A Judge of a High Court and a District Judge—Whether includes a Judge of the High Court and a District Judge in the former State of Jodhpur.

Held, that under s. 7(3) (a) and (b) of the Industrial Disputes Act (XIV of 1947) as amended by s. 34 of the Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950) the phrase "a Judge of a High Court and a District Judge" includes a Judge of the High Court and a District Judge in the former State of Jodhpur.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 103 of 1952.

Appeal under article 133(1) (c) of the Constitution of India from the Judgment and Order, dated the 10th August, 1951, of the High Court of Judicature for Rajasthan at Jodhpur (Wanchoo and Bapna JJ.), in D. B. Civil Miscellaneous Application No. 21 of 1951.

K. S. Hajela, Advocate-General of Rajasthan, for the appellant.

No appearance for the respondents.

1954. March 17. The Judgment of the Court was delivered by

GHULAM HASAN J.—This appeal is brought under a certificate granted by the High Court of Rajasthan under article 133(c) of the Constitution of India against a judgment and order of that High Court in writ petition under article 226 holding the appointment of one Shri Sukhdeo Narain as invalid and directing that all proceedings taken by him as the Industrial Court under section 7 of the Industrial Disputes Act (No. XIV of 1947) are null and void.

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We are informed that Shri Sukhdeo Narain has ceased to work as an Industrial Tribunal and the present appeal, therefore, becomes infructuous, but we are invited by the Advocate-General on behalf of the State of Rajasthan who is the appellant before us to decide the question as to the validity of the appointment, as it is likely to affect other awards made by tribunals under the Industrial Disputes Act. We accordingly proceed to give our decision.

The question involved in the case is whether the appointment of Shri Sukhdeo Narain is invalid because he does not fulfil the qualifications laid down for a tribunal under section 7(3) of the Industrial Disputes Act.

Section 7(3) hereinafter referred to as the Industrial Act says :—

“Where a tribunal consists of one member only, that member, and where it consists of two or more members, the chairman of the tribunal, shall be a person who—

(a) is or has been a Judge of a High Court; or

(b) is or has been a District Judge ;

.....”

The Industrial Act was applied to Rajasthan by the Rajasthan Adaptation of Central Laws Ordinance, 1950 (Ordinance IV of 1950), by the Rajpramukh on January 24, 1950. By this adaptation section 7 of the Industrial Act came to be applied to Rajasthan. Shri Sukhdeo Narain was appointed on October 9, 1950, by a notification which ran as follows :—

“In exercise of the powers conferred by section 7 of the Industrial Disputes Act, 1947 (XIV of 1947) the Government of Rajasthan is pleased to constitute an Industrial Tribunal consisting of Shri Sukhdeo Narain, a retired Judge of the High Court of the erstwhile Jodhpur State for the adjudication of an Industrial dispute in the Mewar Textile Mills Ltd., Bhilwara, in Rajasthan.”

The appointment of Shri Sukhdeo Narain was objected to by the respondent on the ground that the

words "a Judge of a High Court" in section 7(3) mean "a Judge of the High Court of Judicature for Rajasthan established under the Rajasthan High Court Ordinance, 1949" and as Shri Sukhdeo Narain had been a Judge of the High Court of the former State of Jodhpur, he could not be held to be Judge of the High Court under section 7(3) of the Industrial Act. This objection was upheld by the High Court.

Though the appointment of Shri Sukhdeo Narain in the notification was based upon the fact that he was a retired Judge of the High Court of Jodhpur, in arguments it was also contended before the High Court that even if he was not qualified for appointment as a former Judge of a High Court, he was certainly qualified for appointment as a former District Judge. The High Court repelled this contention. It appears that the United State of Rajasthan came into existence on April 7, 1949, and the United State of Matsya was integrated with it on May 15, 1949. Section 5 of Ordinance No. IV of 1950 lays down that :

"For the purpose of the application of any Central law to Rajasthan, unless there be anything repugnant in the subject or context,—

(ix) references therein to other civil, criminal and revenue courts, to public offices, and to Judges, Magistrates, officers or authorities shall be deemed to be references to such courts, offices and Judges, Magistrates, officers or authorities of or in Rajasthan."

The High Court held that the word "Rajasthan" as defined in Ordinance I of 1949 means the United State of Rajasthan and "the Judges and other officers" mentioned in section 5(ix) must be held to be those in the service of the United State of Rajasthan. Accordingly they held that Shri Sukhdeo Narain could not be held to be a District Judge within the meaning of section 7(3) (b) and his appointment as an Industrial Tribunal under that section was, therefore, invalid. We are of opinion that this appeal can be decided on a short ground. The Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950) came into force on May 20, 1950. By section 34 it was provided that the

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Industrial Disputes Act, XIV of 1947, shall be amended in the manner specified in the Schedule and the Schedule substituted sub-section (2) to section (1) of the Industrial Act as follows :—

“It extends to the whole of India except the State of Jammu and Kashmir.”

As we have already stated the appointment of Shri Sukhdeo Narain was made on October 9, 1950, *i.e.*, after the Industrial Disputes Act had become applicable to Rajasthan. It is not necessary therefore to invoke the provisions of Ordinance IV of 1950 in deciding the question of the validity of the appointment. The argument based on section 34 of Act XLVIII of 1950 was put forward before the High Court at the time of the hearing of the application for leave to appeal and it was contended that in view of section 34 the provisions of Rajasthan Adaptation of Central Laws Ordinance, 1950, namely section 5, sub-sections (vii) and (ix), stood amended or repealed but the High Court observed that even if this argument had been raised before them in appeal, it would have made no difference. It has been contended before us by Mr. Hajela, the learned Advocate-General on behalf of the State, that after the Industrial Disputes Act of 1947 was extended to Rajasthan by section 34 of the Industrial Disputes (Appellate Tribunal) Act, XLVIII of 1950, the provisions of the former stood amended by section 34 and could not be read subject to section 5 of the Rajasthan Adaptation of Central Laws Ordinance IV of 1950. We think there is force in this contention. The effect of section 34, as we have already indicated, was to extend the territorial application of the Industrial Disputes Act, 1947, to the whole of India including Rajasthan the exception being the State of Jammu and Kashmir only. This being so the words “A Judge of a High Court and a District Judge” used in section 7(3) (a) and (b) respectively of the Industrial Disputes Act, 1947, must be held now to include “A Judge of the High Court and a District Judge in the former State of Jodhpur”. There is now no room for the application of section 5 of Ordinance IV of 1950 according to which a Judge of the High Court

and a District Judge could only mean a Judge of the High Court for Rajasthan established under the Rajasthan High Court Ordinance 1949 and a District Judge of or in Rajasthan within the meaning of section 5(ix) of Ordinance No. IV of 1950. Accordingly we hold that the appointment of Shri Sukhdeo Narain was perfectly valid.

We accordingly set aside the order of the High Court but without costs, as the respondent is not represented.

Agent for the appellant : *R. H. Dhebar.*

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