1956

October 11.

ROHTAS INDUSTRIES LTD.

v.

BRIJNANDAN PANDEY.

[BHAGWATI, VENKATARAMA AYYAR, S. K. DAS and GOVINDA MENON JJ.]

Industrial Dispute—Temporary employees—Discharge of workmen—Application before the Labour Appellate Tribunal—Scope of enquiry—Discretion of the Tribunal—Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), s. 22.

The scope of an enquiry under s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is whether there is a *prima facie* case made out for the proposed discharge of the workman and the employer has not resorted to any unfair practice or victimisation.

Though an Industrial Tribunal can create new obligations or modify contracts in the interests of industrial peace or to prevent unfair practice or victimisation, its discretion has to be exercised in accordance with well recognised principles and it cannot ignore altogether an existing agreement or existing obligations.

The Automobile Products of India Ltd. v. *Rukmaji Bala* ([1955] 1 S.C.R. 1241) and *Atherton West & Co. Ltd.* v. *Suti Mill Mazdoor Union*, ([1953] S.C.R. 780), relied on.

Where, as in the present case, the Labour Appellate Tribunal did not direct its mind to the real question to be decided on an application under s. 22 of the Act for permission to discharge the temporary employees and without deciding whether the workmen were temporary employees or not, passed an order dismissing the application on the basis of a finding which was not determinative of the real point or question at issue, *held* that the decision must be set aside and the proper order passed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 144 of 1955.

Appeal by special leave from the judgment and order dated September 25, 1953, of the Labour Appellate Tribunal of India, Calcutta in Miscellaneous Case No. C-112 of 1953.

C. K. Daphtary, Solicitor-General of India, A. B. N. Sinha and *B. P. Maheshwari*, for the appellant.

S. P. Sinha, R. Patnaik and *A. D. Mathur*, for the respondents.

1956. October 11. The Judgment of the Court was delivered by

S. K. DAS J.—This is an appeal by special leave from a decision of the Labour Appellate Tribunal, Calcutta, dated the 25th September, 1953. The relevant facts lie within a narrow compass. On the 4th of May 1953 the appellant, the Rohtas Industries Limited, Dalmianagar, made an application to the said Labour Appellate Tribunal under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), hereinafter referred to as the Act, for permission to discharge ninety six temporary employees in the following circumstances. The appellant company have a number of factories at Dalmianagar including a cement factory, power house, pulp mill, paper factory, chemical factory, factory for the manufacture of certain acids and an asbestos cement factory. The company had a number of temporary employees who were engaged temporarily in connection with certain erection works for the extension and enlargement of those factories. The terms of employment of these employees were embodied in a temporary appointment form which was signed by the employees as well as the management. The said terms stated, *inter alia*, that "the company could discharge the employee at any time without notice, compensation and giving any reason therefor, whether on completion of the work on which the employee was engaged or earlier"; the terms also made it clear that whether the employee was on the same job or some other job, in the same department or some other, either on temporary work or permanent work, he would remain a temporary employee until the Works Manager issued a written letter expressly making him a permanent employee. As and when the various erection works were completed, the temporary employees were first put on a list of spare men and then discharged. Some time prior to the 3rd of July 1952, sixty nine of these temporary employees were spared for being discharged. The names of these sixty nine employees were given in two lists, Appendix

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A and Appendix B. It was alleged that on the 3rd of July 1952, a number of these employees headed by one Brij Nandan Pandey entered the office of Shri L. C. Jain, Manager of the Cement Factory, and Brij Nandan Pandey assaulted the Manager. A serious situation resulted from that incident and the company stopped the sixty nine temporary employees from coming to their factories or to their Labour Office and issued a notice to them stating that the company were applying to the Industrial Tribunal for permission to terminate their services. At that time an industrial dispute relating to, among other things, the payment of bonus to the employees was pending adjudication in the Court of the Industrial Tribunal, Bihar. On the 5th of July 1952, the appellant company made an application to the said Tribunal for permission to discharge the sixty nine employees. The application was made under section 33 of the Industrial Disputes Act, 1947. On the 12th of July 1952, forty nine out of the said sixty nine employees made an application, under section 33-A of the Industrial Disputes Act, to the Chairman, Industrial Tribunal, Bihar, on the allegation that the appellant company had discharged sixty nine employees on the 5th July 1952 and had thereby contravened section 33 of the Industrial Disputes Act, 1947. On the 20th of August 1952, thirty six more temporary employees were put on the spare list and an application was made to the Industrial Tribunal Bihar, for including these thirty six persons also in the application which had been made for permission to discharge the temporary men; thus, all told, the application related to one hundred and five temporary men. The case of the appellant company was that the completion of the erection works for which these temporary men were originally employed was a gradual process and so far as the Cement Factory erection work was concerned, it was completed by the end of March 1952 except for certain minor additions and alterations. Therefore, the appellant company no longer required the services of the temporary employees and they were put on the spare list as and

when their services were no longer required.

The two applications which had been made to the Industrial Tribunal, Bihar, the one under section 33 of the Industrial Disputes Act and the other under section 33-A of the said Act, remained pending with the Industrial Tribunal till the 17th of December 1952 on which date the application under section 33-A filed by forty nine of the sixty nine temporary employees, was dismissed. On the 3rd of January 1953, the Chairman of the Industrial Tribunal, Bihar, intimated to the appellant company that the Tribunal was no longer competent to pass any orders on the application under section 33 of the Industrial Disputes Act, 1947, as the adjudication proceedings on the main reference had already concluded. Two appeals were taken to the Labour Appellate Tribunal, one from the award made on the main adjudication and the other from the order made on the application under section 33-A of the Industrial Disputes Act, 1947. On the 20th May 1953, the appeal from the order under section 33-A was dismissed. As we are not concerned with that appeal in any way, nothing further need be said about it in this judgment.

The appeal from the main award was pending on the 4th of May 1953 on which date the appellant company made their application under section 22 of the Act to the Labour Appellate Tribunal for permission to discharge ninety six of the temporary employees. Though there were one hundred and five temporary employees originally, with regard to whom an application had been made to the Industrial Tribunal, Bihar, nine out of them voluntarily left the service of the company; therefore, the number of temporary employees regarding whom the application under section 22 of the Act was made was ninety six only.

The application was contested by forty two of the temporary employees, and in their affidavit they denied that any of the sixty nine workmen were originally recruited as temporary workmen and they further denied that they were involved in the incident relating to the assault on Shri L.C. Jain on the 3rd of July 1952. They said that in effect they were

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permanent employees and enjoyed all the benefits of permanent employees. They further stated:

"The erection work of the cement plants of the petitioners was completed towards the end of 1950 and it is therefore patently false to suggest that we became redundant as a result of the completion of the erection of the cement plants. It is significant to note that a large number of workmen who had worked on the job of erecting the cement plants were discharged shortly after the completion of the said work on the ground that they were surplus. The cement plants started to work in full swing from about the first quarter of 1951 and we were working in the said cement plant producing cement from the very beginning right up to 5th July 1952, when we were informed that we were surplus. In fact the real reason for the proposed retrenchment is the petitioner's desire to increase the rate of exploitation of its workmen by increasing the workload".

With regard to the terms embodied in the appointment form, it was alleged that on or about the 3rd of December 1948 the employees of the appellant company were forced to go on strike on account of an industrial dispute; towards the end of the strike the workmen became exhausted and drifted back to work. The strike was ultimately called off and the appellant company taking full advantage of their victory compelled a section of the workmen, who did not return to work until the strike was called off, to sign the appointment form with the purpose of humiliating and terrorising them.

The Labour Appellate Tribunal gave its decision on the 25th September 1953 which is the decision under appeal. It dismissed the application of the appellant company on a finding which the Tribunal expressed in the following words:

"It is thus clear that these 96 workmen had been working in the production departments from as far back as the beginning of the year 1951 and so the completion of the erection work cannot be put forward as the ground for their retrenchment".

Referring to the Directors' Report dated the 10th of July 1951, the Tribunal came to the conclusion that the workmen's version that the erection works had been completed by the end of 1950 was supported by the said report. In other words, the decision of the Labour Appellate Tribunal was primarily based on the finding that the erection works were completed by the end of 1950 and therefore there was no ground for discharging the ninety six temporary men.

Learned counsel for the appellant has contended before us that (1) the Appellate Tribunal did not correctly appreciate the true scope and effect of section 22 of the Act; (2) the Appellate Tribunal gave attention to only one point, namely, the completion of erection works, and did not consider the other circumstances put forward on behalf of the appellant in support of their application; (3) instead of considering the real point which arose for determination on an application under section 22 of the Act, the Appellate Tribunal confined its attention to a point which was not decisive of the question before it; and (4) by reason of its failure to consider the real point for determination, the order of the Appellate Tribunal has resulted in manifest injustice. In our opinion, these contentions are correct and should be upheld.

It was pointed out in *The Automobile Products of India Ltd.* v. *Rukmaji Bala*(1) that section 22 of the Act confers on the Appellate Tribunal a special jurisdiction which is in the nature of original jurisdiction and the Tribunal being an authority of limited jurisdiction must be confined to the exercise of such functions and powers as are actually conferred on it. With regard to the scope of section 22 of the Act, it was observed:

"The object of section 22 of the 1950 Act like that of section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing the

(1) [1955] 1 S.C.R. 1241.

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pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of those proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation between the employer and the workmen. To achieve this object a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 22 of the 1950 Act and section 33 of the 1947 Act which impose the ban also provide for the removal of that ban by the granting of express permission in writing in appropriate cases by the authority mentioned therein. The purpose of these two sections being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these sections is to accord or withhold permission".

The earlier decision of this Court in *Atherton West & Co. Ltd.* v. *Suti Mill Mazdoor Union*(1) dealt with clause 23 of the U. P. Government Notification dated the 10th March 1948 made in exercise of the powers conferred by sections 3 and 8 of the U. P. Industrial Disputes Act, 1947, and it was there observed that the scope of the enquiry was to come to a conclusion whether there was a *prima facie* case made out for the discharge or dismissal of the workman and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the matter of the proposed discharge or dismissal of the workman. That being the scope of the enquiry on an application under section 22 of the Act, what the Labour Appellate Tribunal had to decide in the present case was whether the appellant company had made out a *prima facie* case for the proposed discharge and whether they were resorting to any unfair practice or victimisation in the matter of the proposed discharge.

(1) [1953] S.C.R. 780.

Instead of doing that, the Labour Appellate Tribunal dismissed the application of the appellant company on the only ground that the version of the workmen that the erection works had been completed by the end of 1950 was supported by the Report of the Directors dated the 10th July 1951. Learned counsel for the appellant has rightly pointed out that even in respect of the completion of erection works the conclusion of the Appellate Tribunal is a complete *non sequitur*. First of all, the Directors' Report was dated the 10th July 1951 though the balance-sheet of the company with which the report was dealing related to the period ending on the 31st October 1950. The report naturally referred to such works as were completed on or before the 10th of July 1951. It should be obvious that the completion of erection works must be a gradual process, and while some of the erection works might have been completed by the end of 1950 or July 1951, some were still in the process of completion. Under their terms of employment, temporary employees could be moved from one work to the other and the mere circumstance that they were employed in a production department for some time, even if true, did not make them permanent employees; nor did the circumstance that they enjoyed some of the benefits of permanent employees make them permanent. These are circumstances which have been completely ignored by the Labour Appellate Tribunal.

It is worthy of note that in their application dated the 12th of July 1952, the forty nine workmen admitted:

"though most of us were originally recruited for erection work in the Cement Factory, many of us were later on transferred as permanent workers to sugar and paper factories and some of us were absorbed as permanent workers in the maintenance section of the Cement Factory". (Vide paragraph 3 of the application).

In the joint affidavit filed on the 12th August, 1953, in reply to the appellant's application under section 22 of the Act, the said workmen denied however that

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they were at any time engaged temporarily for temporary work: vide paragraphs 3 and 6 of the affidavit. Obviously, they were shifting from the position which they had originally taken up. No evidence was given that the men who were employed temporarily were afterwards made permanent. They filed a schedule, marked 'A', to their affidavit wherein they showed their period of service and the name of the factory or plant from where their duties stopped. On an examination of the schedule (Annexure A) it appears that a number of them were put on the spare list when the erection work was completed some time in 1952. Annexure 'A' therefore supports the case of the appellant company that the completion of the erection works was a gradual process, some were completed in 1950, some in 1951 and some in 1952. The first batch of sixty-nine employees with whom we are concerned were put on the spare list between March and July 1952 and the second batch were put on the spare list in August 1952 when the relevant erection works were completed. The finding of the Labour Appellate Tribunal with regard to the completion of erection works was vitiated by reason of the failure to take into consideration the circumstances stated above.

With regard to the terms of employment embodied in the temporary appointment form, the respondents' case was that the appointment forms were signed as a result of the strike in 1948; it was never suggested that these forms were never signed at all and the comment of learned counsel for the respondents that the appellant company have not produced the appointment forms has very little force. The respondents gave no evidence in support of the allegation that the appointment forms were taken from them for the purpose of humiliating or terrorising them, nor did the Appellate Tribunal come to any such finding. None of the affidavits filed on behalf of the respondents suggested, even in a remote way, that the appellant company were resorting to any unfair practice or victimisation in the matter of the proposed discharge.

Learned counsel for the respondents has contended before us that the finding of the Labour Appellate Tribunal is a finding on a question of fact, namely, whether the respondents were temporary or permanent employees. He has argued that this Court should not interfere even though the finding is based on reasons which may not appear convincing to us. We have, however, pointed out that the Labour Appellate Tribunal gave no finding on the question whether the respondents were temporary employees or not. The only finding which the Tribunal gave related to a different matter, namely, the completion of erection works. Secondly, learned counsel for the respondents has contended that under section 22 of the Act the Appellate Tribunal had a discretion either to lift the ban or not to lift it and in a matter of discretion this Court should not interfere. It is true that this Court does not sit upon the decisions of Industrial Tribunals like an ordinary Court of appeal, and there must be special circumstances to justify the exercise of our special power under article 136 of the Constitution. In our opinion, such special circumstances exist in the present case where the Labour Appellate Tribunal has not directed its mind to the real question to be decided on an application under section 22 of the Act and has passed an order on the basis of a somewhat irrelevant finding which has resulted in manifest injustice.

The discretion which an Industrial Tribunal has must be exercised in accordance with well recognised principles. There is undoubtedly a distinction between commercial and industrial arbitration. As has been pointed out by Ludwig Teller (Labour Disputes and Collective Bargaining) Vol. I, page 536:

"Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements".

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A Court of law proceeds on the footing that no power exists in the courts to make contracts for people, and the parties must make their own contracts. The courts reach their limit of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice or victimisation. We cannot, however, accept the extreme position canvassed before us that an Industrial Tribunal can ignore altogether an existing agreement or existing obligations for no rhyme or reason whatsoever.

It has been necessary for us to go into the facts and circumstances of this case in greater detail than is usual with this Court, because the Labour Appellate Tribunal did not do so. The Act under which the Appellate Tribunal purported to pass its order has now been repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. A question of some nicety as to the correct interpretation of section 33 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 might have arisen if we had thought fit to remand this case. We do not, however, think it necessary to pass an order of remand in this case and therefore abstain from expressing any opinion as to the correct position in law under sub-section (2) of section 33 of that Act. No new facts need investigation in this case. Learned counsel for the parties have taken us through all the affidavits filed and the facts necessary for an enquiry under section 22 of the Act clearly emerge from those affidavits. We are satisfied *prima facie* that the respondents were temporary employees and were put on the spare list as and when the erection works were gradually completed. The appellant company have made out a *prima facie* case for the permission which they have asked for and there is no suggestion even of any unfair practice or victimisation.

In these circumstances, we would allow the appeal, set aside the decision of the Labour Appellate Tribunal dated the 25th September 1953 and pass the order

which that Tribunal should have passed in this case, namely, that permission be granted to the appellant to discharge ninety six temporary workmen. In the circumstances of this case, we think that the parties must bear their own costs throughout.

Appeal allowed.

IN RE: SHRI 'M', AN ADVOCATE OF THE SUPREME COURT OF INDIA.

[JAGANNADHADAS, VENKATARAMA AYYAR and B. P. SINHA, JJ.]

Professional Misconduct—Appropriation by Advocate on record of Surplus Paper Book Cost towards fees—Legality—Standard of professional conduct—Trustee—Lien—Procedure—Supreme Court Rules, 1950, (as amended), O. IV, r. 30.

Facts. Shri 'M', while an Agent of the Supreme Court, filed a criminal appeal and later on became an Advocate on record under the new rules of the Court which came into force on January 26, 1954. He received a sum of Rs. 750 from his client for costs of printing of the Paper Book and deposited the same in the Punjab High Court from whose decision the appeal arose. There was a surplus of Rs. 242-1-9 pies. He withdrew the amount without informing his client, made no demand of any fees as being due to him, did not lodge any bill for taxation and appropriated the sum towards his alleged fees. The client came to know of the withdrawal from the Punjab High Court and when he confronted Shri 'M' with the letter from that court Shri 'M', who had denied the receipt of the surplus amount, could no longer do so and stated that he was entitled to a reasonable fee, had a lien therefor and had appropriated the amount.

Held, that on the facts found the Advocate was guilty of professional misconduct and must be suspended from practice.

The high standard of professional conduct contemplated by rule 30 of Order IV of the Supreme Court Rules virtually made an Advocate a trustee for his client in respect of all his moneys which came into his hands except what was specifically ear-marked for fees. Any lien which he might have under the rules would not justify the appropriation of any such money towards his fees without the express or implied consent of the client or an order of Court.

Nor could an Advocate, in absence of a prior settlement of fees, constitute himself a judge in his own cause and determine what