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largely to the effect that the appellant's men did election work in the morning or in the evening, that is, out of office hours. That shows that the work of the staff was in addition to their normal duties, and on the principles stated above, they could not be held to have been employed in connection with the election. As the first respondent does not appear himself to have understood the true position under Rule 118 and has failed to adduce evidence requisite for a decision of the question, he must fail, the burden being on him to establish that that Rule had been infringed.

In the result, this appeal is allowed, the order of the Election Tribunal is set aside and the election petition of the first respondent will stand dismissed. As the parties have each succeeded on one issue and failed on another, they will bear their own costs throughout.

Appeal allowed.

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December, 20.

PUNJAB NATIONAL BANK Ltd.

v.

SRI RAM KANWAR, INDUSTRIAL TRIBUNAL, DELHI.

(BHAGWATI, VENKATARAMA AIYAR, B. P. SINHA and S. K. DAS JJ.)

Industrial Dispute—Travelling and halting allowances to the workers' representatives—Order of the Tribunal directing employer payment of such expenses pending adjudication proceedings—Jurisdiction—Practice of the Industrial Courts—Costs—Discretion of the Tribunal—Industrial Disputes Act, 1947 (XIV of 1947), s. 11(3)(7)—Code of Civil Procedure (Act V of 1908), s. 35.

Sub-section (7) of s. 11 of the Industrial Disputes Act, 1947, as inserted by Act 48 of 1950, provides: "Subject to the rules made under this Act, the costs of, and incidental to, any proceeding before a Tribunal shall be in the discretion of that Tribunal, and the Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such

costs are to be paid, and to give all necessary directions for the purposes aforesaid, and such costs may, on application made to it by the person entitled, be recovered as arrears of land revenue or as a public demand by the appropriate Government."

During the pendency of the proceedings before the Industrial Tribunal for the adjudication of a dispute between the appellant Bank and its workmen, an application was made by one of the representatives of the workmen praying *inter alia* that the appellant should be ordered to pay travelling and halting allowances for the representatives of the various Unions coming from different stations other than Delhi to attend the hearing before the Tribunal at Delhi, on the ground that the appellant had branches all over India and that there were several Unions of its employees at those branches who were involved in the dispute in question. The Tribunal while conceding that there was no provision of law in support of the claim made by the respondents nevertheless made the order relying on the general practice of the Industrial Courts. The appellant appealed by special leave and contended that the order was wholly without jurisdiction and was also unjust, while the respondents supported the order relying on s. 11 (7) of the Industrial Disputes Act, 1947 :

Held, that the order of the Tribunal was without jurisdiction and could not be supported either on the basis of the general practice of the Industrial Courts or with reference to the provisions of s. 11 (7) of the Act, because (1) there was no uniform or consistent practice in the matter and even if there was any such practice, it was neither warranted by law nor by the principles of reason and justice ; (2) on a proper construction of the sub-section there was no power in the Tribunal to direct the payment of the costs of a party in advance by the other party, irrespective of the final result of the proceeding.

The discretion which is given to a Tribunal under s. 11(7) of the Act is a judicial discretion and must be exercised according to the rules of reason and justice, not by chance or caprice or private opinion or some fanciful idea of benevolence or sympathy.

Jeevan Textile Mills, Hyderabad (Deccan) v. *Their Workmen,* (1956) 1 L.L.J. 423, approved.

Certain Banking Companies v. *Their Workmen,* (1952) 2 L.L.J. 54, in so far as it decided that the Tribunal had power and jurisdiction under s. 11 (7) of the Act to direct the Banks to meet the expenses of the workmen in a pending proceeding, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 134 of 1955.

Appeal by special leave from the order dated April 17, 1954, of Sri Ram Kanwar, Industrial Tribunal, Delhi, made on an application filed on April 17, 1954.

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S. K. Das J.

Ram Lal Anand and *Naunit Lal,* for the appellant.

Y. *Kumar,* for respondent No. 13.

1956. December 20. The Judgment of the Court was delivered by

S. K. DAS J.—The Punjab National Bank Ltd. is the appellant before us. Shorn of all details not necessary for our purpose, the facts are these. By its Order No. LR-100 (98) dated September 2, 1953, the Government of India, Ministry of Labour, appointed Shri Ram Kanwar, respondent No. 1, as the Industrial Tribunal for the adjudication of a dispute which had arisen between the appellant and its workmen in respect of the following matter :

"Absorption of Bharat Bank employees in the Punjab National Bank Ltd., and their service conditions."

On April 17, 1954, in the course of certain preliminary proceedings before respondent No. 1, an application was made on behalf of the All India Punjab National Bank Employees' Federation, in which it was stated that a number of other Unions were involved in the dispute in question, because the appellant had branches all over India and there were several Unions of its employees at those branches. It was further stated in the application that some of those Unions had submitted their statements when the dispute in question was referred to the Industrial Tribunal, Bombay, with Shri Panchapagesa Shastri as its sole member and Chairman; that Tribunal did not, however, function as Shri Panchapagesa Shastri was appointed a member of the Labour Appellate Tribunal of India. Two substantial prayers were made in the application of April 17, 1954: one was that due publicity of the adjudication proceedings should be given by issuing notices to all those Unions to participate in the proceedings, and the second prayer was that an order should be made directing the appellant to pay travelling and halting allowances to the representatives of the various Unions so as to enable the latter to send their representatives to Delhi, the place where the

adjudication proceedings were pending. A list of fourteen Unions and organisations was given along with the application, with the number of representatives which each Union or organisation wished to send.

In the present appeal we are concerned only with the second prayer made in the aforesaid application, and the order which respondent No. 1 made with regard to that prayer, being the order impugned before us, was in these terms :

"The management objects to the grant of any T.A. or halting allowance to the representatives of the Unions. It is, no doubt, correct that there is no provision of law on this point in favour of the representatives, but the general practice of various Tribunals has all along been to allow reasonable T.A. and halting allowance to the representatives of the Unions, specially in Banks' cases. It is, therefore, ordered that the representatives of the Unions, who put in appearance in the Tribunal from stations outside Delhi, shall be paid 2½ second class railway fares to and from Delhi, plus Rs. 10/- per day as halting allowance, by the management of the Bank.

* * * *

The Bank is also requested to direct its respective branches to pay travelling and halting allowances in advance to the employees who intend to come to Court as representatives."

It may be stated here that out of the fourteen Unions and organisations which wanted to send their representatives to take part in the adjudication proceedings, two have their offices in Delhi. Respondent No. 1 directed the payment of travelling and halting allowances to the representatives of the remaining twelve Unions and organisations, and fixed the number of representatives to be sent by each Union or organisation.

The plea of the appellant was that the order passed by respondent No. 1 was wholly without jurisdiction and was also unjust, involving as it did an expenditure of not less than Rs. 2,500/- for each day of hearing in

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the course of the proceedings before respondent No. 1. On that plea the appellant moved the Punjab High Court for the issue of a writ of *certiorari* or such other writ as might be appropriate, for the purpose of quashing the order of respondent No. 1. The Punjab High Court, however, dismissed the petition of the appellant *in limine* on May 14, 1954. The appellant then asked for and obtained special leave from this Court on October 18, 1954.

The question for decision is a very short one. The respondents appearing before us have sought to support the impugned order on the strength of the provisions of sub-s. (7) of s. 11 of the Industrial Disputes Act, 1947 (XIV of 1947), hereinafter referred to as the Act. That sub-section which was added by Act 48 of 1950 and which we shall presently read, lays down, *inter alia,* that the costs of, and incidental to, any proceeding before a Tribunal shall be in the discretion of that Tribunal, and the Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid and to give all necessary directions for the purposes aforesaid. The question is whether respondent No. 1 had power, in the exercise of his discretion under the provisions of sub-s. (7) of s. 11, to direct the payment of costs in advance by one of the parties to the dispute to the other parties in a pending proceeding, irrespective of the final result of that proceeding.

In our opinion, the question admits of only one answer. Sub-section (3) of s. 11 enumerates certain powers vested in a Civil Court under the Code of Civil Procedure, and says that every Board, Court and Tribunal under the Act shall have those powers; the last enumerated power is in general terms, being "in respect of such other matters as may be prescribed." No rules made under the Act bearing on the question of costs have been brought to our notice; therefore, all that can be said, with regard to the effect of sub-s. (3) of s. 11, is that except the enumerated powers, other powers vested in a Civil Court under the Code of Civil Procedure have not been given to the Board,

Court or Tribunal under the Act. The Act, however, contains a separate provision in the matter of costs and that is sub-s. (7) of s. 11. That sub-section reads (we are quoting it as it stood at the relevant time prior to the amendment of 1956) :

"Subject to the rules made under this Act, the costs of, and incidental to, any proceeding before a Tribunal shall be in the discretion of that Tribunal, and the Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid, and such costs may, on application made to it by the person entitled, be recovered as arrears of land revenue or as a public demand by the appropriate Government."

A comparison of the sub-section with s. 35 of the Code of Civil Procedure shows that the sub-section is in terms similar to those of s. 35 of the Code of Civil Procedure except for the concluding portion of the sub-section which relates to the recovery of costs as arrears of land revenue. There is also another difference in that sub-ss. (2) and (3) of s. 35 of the Code of Civil Procedure do not find place in the Act. On a plain reading of the sub-section, it is manifest that (1) the expression "costs of any proceeding" means costs of the entire proceeding as determined on its conclusion and not costs in a pending proceeding, nor costs to be incurred in future by a party ; and (2) the expression "costs incidental to any proceeding" similarly means costs of interlocutory applications etc.—such costs as have been determined thereon, at the conclusion of the hearing. Neither of the two expressions has any reference to costs payable in advance or to be incurred in future by a party ; far less do they refer to halting and travelling allowances to be incurred by a party while attending the Court on his own behalf. Respondent No. 1 correctly appreciated the legal position, and said that there was no provision of law in support of the claim made by

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the respondents. He relied, however, on the general practice of Industrial Courts, particularly in Banks' cases. We doubt if there was any such general or consistent practice; nor do we think that such practice, if any, is legally justified. But we shall advert to this matter when considering such of the decisions of Industrial Tribunals as have been placed before us.

Learned counsel for the respondents has not relied on practice, but on the terms of the sub-section. He has submitted that the concluding portion of the sub-section which states that "such costs may, on application made to it by the person entitled, be recovered as arrears of land revenue or as a public demand by the appropriate Government" shows that costs may be granted in advance in a pending proceeding. His argument has proceeded on these lines: firstly, he has submitted that an Industrial Tribunal becomes *functus officio* with the submission of the award; secondly, the concluding portion of the sub-section shows that an application for recovery of costs can be made to "it" (that is, the Tribunal); therefore, the application must be made before the Tribunal becomes *functus officio*; that is, at a stage when the proceeding is still pending. In our opinion, this argument is wholly fallacious and proceeds on a mis-reading of the sub-section. The expression "it" in the concluding portion of the sub-section refers to the appropriate Government and not to the Tribunal; thus the very basis of the argument disappears and it is unnecessary to consider if the Tribunal becomes *functus officio* with the submission of its award—a proposition regarding which we express no opinion.

It is not disputed that sub-s. (7) of s. 11 of the Act gives a discretion to the Tribunal, and it has full power to determine by and to whom and to what extent and subject to what conditions, if any, the costs are to be paid. It is clear, however, that the discretion is a judicial discretion and must be exercised according to the rules of reason and justice—not by chance or caprice or private opinion or some fanciful

idea of benevolence or sympathy. It is a negation of justice and reason to direct the appellant to pay in advance the costs of the respondents irrespective of the final result of the proceeding. The general rule is that costs follow the event unless the Court, for good reasons, otherwise orders. Respondent No. 1 gave no reasons for his order except that of practice—a practice, assuming there be any such practice, which is neither legal nor just. It may be conceded that the jurisdiction of an Industrial Tribunal is not invoked for the enforcement of mere contractual rights and liabilities of the parties to the dispute referred to the Tribunal for adjudication; its jurisdiction in the matter of adjudication of an industrial dispute is wider and more flexible. All the same, it is not an arbitrary jurisdiction it may be readily conceded that an employee is as much entitled to a fair deal as an employer and he must be protected from victimisation and unfair labour practice, but 'social justice' does not mean that reason and fairness must always yield to the convenience of a party—convenience of the employee at the cost of the employer as in this case—in an adjudication proceeding. Such one-sided or partial view is really next of kin to caprice or humour. Lord Halsbury L. C. put the matter in characteristically forceful language when he said: ".... 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's Case* (1); according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular." (*Susannah Sharp* v. *Wakefield*) (2).

There are special cases where in a pending proceeding some costs may have to be borne by a party to a litigation; for example, sub-r (4) of r. 4 of O. XXXII, Code of Civil Procedure, says that where there is no other person fit and willing to act as guardian of a minor for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the

(1) 5 Rep. 100, a. (2) [1891] A. C. 173, 179.

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costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit. Section 35 of the Code is not only subject to such conditions and limitations as may be prescribed, but is also subject to the provisions of any law for the time being in force. Under the Matrimonial Causes Rules, 1950, the practice in English Courts is that after the registrar's certificate for trial has been granted, or, with leave, at an earlier stage of the cause, a wife who is a petitioner and has asked for costs or who has filed an answer, may apply for security for her costs of the cause up to the hearing, and of and incidental to the hearing (see Halsbury's Laws of England, 3rd Ed., Vol. 12, para. 765 at p. 358). When such security is ordered, unless the husband elects to pay the amount into the registry and gives notice to the wife's solicitor, a bond is required from him. Such cases stand on a special footing and are governed by special statutory provisions. They have no application in the present case and afford no justification for the order impugned before us.

We now turn to the question of practice in the Labour Courts. The earliest decision which has been brought to our notice is *Kirloskar Brothers Ltd.* v. *Their Workmen*(1). That was a case in which one of the demands for adjudication was the demand for travelling and other expenses of the workers' representatives, when such representatives were required to go out at the instance of any duly constituted authority or Court in respect of any industrial matter. It was observed: "The demand according to the company amounted to financing the administration of the Union and was therefore objectionable even on psychological grounds." The Tribunal directed that the travelling and other expenses to be incurred in connection with the Union work must be paid out of the Union funds and the employer could not be required to contribute the sum.

(1) [1951] 2 L. L. J. 557.

In the well-known case, *Certain Banking Companies* v. *Their Workmen*(1), the question of facilities for effective representation of their cases on behalf of the employees was raised and considered at some length. The decision given was that the Tribunal had power and jurisdiction, under sub-s. (7) of s. 11 of the Act, to direct the Banks to meet the reasonable expenses of the workmen in a pending proceeding in order to ensure a fair and effective hearing. The grounds on which the decision was based were these : (1) the Banks were well organised and their managements were in possession of resources ; (2) the adjudication by a Labour Court or Industrial Tribunal was a compulsory adjudication in the interests of the public, and as disputes relating to Banking companies, with establishments in more than one State, were referred to the Tribunal by the Central Government, the circumstance that various workmen residing in various States were compelled to submit to an adjudication by a Central Tribunal was sufficient to justify an order for the payment of their travelling and halting allowances ; (3) there was nothing in the Act to preclude the exercise of such power on the part of the Industrial Tribunal as was required to carry on the fundamental object of ensuring a proper hearing for the two parties to the dispute, and the weaker party, namely, the comparatively unorganised, numerous and scattered workmen employed in different branches, needed assistance to present their case ; (4) prior to the addition of sub-s. (7) of s. 11 in 1950, various Industrial Tribunals used to pass similar orders and it was in recognition of the necessity of such orders that the statutory provision in the sub-section was made ; and (5) the principles of natural justice required that a real opportunity should be given to the workmen to present their case by asking the employer to pay for their expenses. In our opinion, not one of the aforesaid grounds is really sustainable, either in law or on the principle of justice, equity and good conscience. The circumstance that the Banks are well organised and their managements are in possession of

(1) [1952] 2 L. L. J. 54.

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resources cannot be a ground for making them pay for the expenses of the other party; if that is the principle to be applied, then in every case the richer party must be made to pay the expenses of the weaker party, irrespective of the ultimate result of the dispute, even in a dispute raised by the workmen which may be ultimately found to be devoid of all merit, the employer must be made to finance the workmen. Such a principle will merely encourage frivolous and unsubstantial disputes and will run counter to the object and purposes of the Act, namely, the promotion of industrial peace in the interests of the general public. The second circumstance that the adjudication is a compulsory adjudication applies equally to both parties. If it is a compulsory adjudication for the employees, it is equally so for the employer and we can see no reason why that circumstance should involve the imposition of a penalty on one of the parties to the dispute and not on the other. We have already pointed out that on a proper construction of the sub-section, there is no power in the Tribunal to direct the payment of the costs of a party in advance by the other party, irrespective of the final result of the proceeding, and the view expressed by the Bank Disputes Tribunal as to the construction of the relevant sub-section is manifestly erroneous; nor are we satisfied that prior to the addition of the sub-section, there was any consistent or uniform practice in the matter, so as to lead to the inference that the provisions of the sub-section gave statutory recognition to the practice. It is difficult to understand how the principles of natural justice can be invoked in aid of an order which penalises one party to a dispute by making it pay for the costs of the other party in advance, irrespective of the result of the proceeding. We can only say that such an order is neither natural nor has any element of justice in it.

In a later decision, *Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka* v. *Workmen Employed under it* ( ), it was observed: "If, therefore, the Union's representatives thought it proper to attend on the

(1) [1953] I. C. R. Bom. 292 at 307.

various dates before the Tribunal, it is the Union who should bear the costs." In a still later decision, *Jeevan Textile Mills, Hyderabad (Deccan)* v. *Their Workmen*(1), the question was again considered at some length. With regard to sub-s. (7) of s. 11 it was observed: "Although s. 11 (7) is worded in a very wide way and the power to order the payment of costs granted under it to industrial tribunals is made comprehensive and is not even fettered by a provision like s. 35 (2) of the Code of Civil Procedure, requiring the tribunal to state its reasons if costs are not ordered to follow the event, orders for costs can only be made, even by industrial tribunals, on well-recognised principles and not on any abstract ideas as to what, irrespective of such principles, should be considered as desirable in any particular case: vide *United Commercial Bank Case*(2)". We are in agreement with the view expressed above.

It would appear from what we have stated above that there was no uniform or consistent practice in the matter, and we are further of the view that if there was any such practice, it was neither warranted by law nor by the principles of reason and justice. In *Ex parte Snow In re Sherwell*(3), an application was made to review a taxation of costs and the appellant, who was a Barrister-at-law and resided at Liverpool, claimed his travelling expenses from Liverpool to London and back, on the ground that by arguing his own appeal he had saved the expense of engaging counsel to which he would have been entitled. The claim was dismissed as "preposterous and unheard of".

As we began, so we end: there is only one answer to the question and that answer is that respondent No. 1 had no power, in the exercise of his discretion under sub-s. (7) of section 11 of the Act, to direct the appellant in this case to pay the travelling and halting allowances of the representatives of the Unions in a pending proceeding and irrespective of its final

(1) [1956] 1 L. L. J. 423.
(2) [1952] 2 L. L. J. 1.
(3) [1879] Weekly Notes 22.

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result. For the reasons given, this appeal is allowed with costs, and the costs must be paid by the contesting respondents. The order of respondent No. 1, so far as it relates to the payment in a pending proceeding of travelling and halting allowances to the representatives of the various Unions, must be, and is hereby, set aside.

Appeal allowed.

GIPN—SV—76 S. C. India/59—22-7-60—1000.