STATE OF PUNJAB

v.

THE GANDHARA TRANSPORT COMPANY (P) LTD AND OTHERS

April 26, 1973

[P. JAGANMOHAN REDDY AND C. A. VAIDIALINGAM, JJ.]

Industrial Disputes Act (14 *of* 1947) *s.* 2(*k*)—*Dispute espoused by five out of the total sixty workmen—If an industrial dispute.*

The respondent company dismissed three of its workmen and retrenched another employee. Some of the workers demanded the reinstatement of the dismissed workmen and payment of retrenchment compensation to the retrenched workmen and raised a dispute about the matter. The State Government referred the dispute to the Labour Court. The management raised the objection that there was no industrial dispute in as much as the cause of the workmen had not been espoused by a substantial body of the workmen of the company. The Labour Court rejected the objection. In a writ petition, the High Court held that there were 60 workmen in the employment of the respondent company, out of whom only 18 workmen have espoused the cause of the dismissed and retrenched employees, and even out of these 18 workmen 13 had already been dismissed and that therefore, only 5 out of 60 workmen had espoused the cause of the dismissed and retrenched workmen; and hence, it could not be said that a substantial body of the workmen had espoused the cause of the workmen and therefore, there was no industrial dispute which could be referred.

Dismissing the appeal to this Court,

HELD : The State Government will have jurisdiction to make a reference only if there is an industrial dispute. As the espousal of the dispute in the present case was only by five out of sixty employees it could not be said that there has been an espousal of the dispute in this case by an appreciable body of the workmen of the respondent-company so as to make it an industrial dispute. Since there was no industrial dispute, the reference made by the State Government had been rightly held by the High Court to be incompetent. [161E-F]

Workmen of Rohtak General Transport Company v. *Rohtak General Transport Company,* [1962] I L.L.J. 634, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 449 of 1969.

Appeal by special leave from the judgment and order September 10, 1968 of the Punjab and Haryana High Court at Chandigarh in L.P. No. 108 of 1966.

V. C. Mahajan and *R. N. Sachthey,* for the appellant.

Bishen Narain and *Harbans Singh,* for respondent No. 1.

The Judgment of the Court was delivered by

VAIDIALINGAM, J. This appeal, by special leave, is directed against the judgment and order dated the 10th September, 1968, of the Division Bench of the High Court of Punjab and Haryana in L.P.A. No. 108 of 1966, confirming the order of the learned single Judge and holding that the order of the State Government dated the 5th March, 1962 referring a dispute for adjudication was incompetent.

The respondent company dismissed three of its workmen between the 15th December, 1959 and 6th January, 1960 and it also retrenched another employee on the 7th February 1960. The District Motor Transport Workers' Union appears to have raised a dispute with the manageme..t on the 17th November, 1960 and demanded the reinstate-

A ment of the dismissed workmen as well as the payment of retrenchment compensation regarding the workman who was retrenched. The demand not having been met with by the management and conciliation having failed, the State Government was approached for making a reference of the dispute for adjudication. On the 9th June, 1960, the State Government declined to make a reference. A further attempt was made to persuade the State Government by the workmen con-
B cerned to make a reference, but that attempt also failed, as will be seen from the order dated the 29th July 1961. In this order, the State Government had stated that out of sixty workmen employed in the concern, only 18 workmen had supported the demand and these 18 included thirteen dismissed workers of the company. It is the further view of the Government that as a substantial number of work-
C men had not espoused the cause of the dismissed workmen, there was no industrial dispute which could be referred for adjudication. It is to be noted from this order of the State Government that out of the 18 workmen, who are stated to have espoused the cause of the workmen in this case, only five were in the employment of the respondent company and thirteen others were workmen of the respondent who had already been dismissed from service. Therefore, the espousing of the cause of the present workmen was only by five workmen, who were,
D at the relevant time, actually in the employ of the company.

Another attempt appears to have been made to induce the State Government to make a reference and this time the attempt succeeded, as will be seen from the order dated the 5th March, 1962. The State Government, which had twice refused to make a reference, acceded this time to the request of the workmen and referred for adjudication to
E the Labour Court, Rohtak, the following two questions :—

> "1. Whether termination of services of Sarvashri Manmohan Singh, Jagir Singh and Inderjit Singh is justified and in order? If not, to what relief they are entitled?
>
> 2. Whether the retrenchment of Shri Mohinder Singh, Booking Clerk, is justified and in order? If not, to what
F relief he is entitled?"

When the Labour Court commenced the proceedings in respect of this dispute, the management raised two preliminary objections. We are concerned with only the first objection, namely, that the dispute that has been referred by the State Government for adjudication is not an industrial Dispute under section 2(k) of the Industrial Disputes Act inasmuch as the cause of the workman had not been espoused by
G a substantial body of the workmen of the company. The Labour Court accepted the plea of the workmen that the dispute was industrial dispute and overruled the preliminary objection raised in that regard by the management.

The company filed a writ petition in the High Court for quashing the order of the Labour Court as well as the reference made by the
H State Government. The learned single Judge accepted the plea of the management that the dispute in question had not been sponsored by a substantial body of the workmen of the respondent company, and in this view, held that the order of reference was incompetent.

The workmen did not challenge the decision of the single Judge. But the State challenged the same in Letters Patent Appeal before a Division Bench of the High Court. The Division Bench has agreed with the views of the learned single Judge and confirmed his order holding that the reference made by the State Government was incompetent. According to the findings of the learned single Judge, which have been accepted by the Division Bench, the position is that on the 17th November, 1960, when the espousal of the cause of the dismissed and retrenched workmen was made, there were sixty workmen in the employ of the respondent company. It has also been found that the demand was supported by 18 workmen, namely, five workmen, who were in the employ of the respondent and thirteen others, who had already been dismissed from service. The view of the High Court is that having due regard to the strength of the workmen, namely, sixty, and the admitted position that only five of the workmen then in employ espoused the dispute, it cannot be stated that a substantial body of the workmen have espoused the cause of the dismissed and retrenched employees.

Mr. V. C. Mahajan, learned counsel for the appellant, has no doubt strenuously urged that the view of the learned single Judge and the Division Bench is erroneous. In support of his contention, the learned counsel referred to us the decision of this Court in *Workmen of Rohtak General Transport Company* v. *Rohtak General Transport Company*(1). He pointed out that the facts in that case show that though only five out of twenty-two workmen espoused the cause of the dismissed employee, it was held by this Court that five workmen could be considered to form a substantial or appreciable body of the workmen of the company and hence there was an industrial dispute giving power to the Government to refer the same for adjudication. Based upon this decision, the counsel urged that as it has been found in the present case that out of the total of sixty workmen, five have supported the cause of the workmen concerned, it must also be held that there has been an espousal of the dispute by an appreciable number of the employees of the company and that there is an industrial dispute, which was properly referred by the Government.

It is no doubt true that on a superficial reading of the above decision, it can be stated that an espousal by five out of twenty-two workmen will amount to a sponsoring of a dispute by an appreciable body of the workmen of an employer. We will assume that the said decision lays down such a proposition. Even applying the ratio of the said decision to the case on hand, the proportion is very low, being five to sixty. That means only 1/12th of the employees in the establishment of the management has espoused the cause of the dismissed workmen. Such an espousal, in our opinion, cannot be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute.

In our opinion, the above decision does not lay down the proposition that whenever five out of twenty-two workmen sponsor a dispute or in such proportion, there is always an espousal of the cause by a

(1) [1962] (I) LLJ 634.

A substantial or appreciable body of workmen so as to make the dispute an industrial dispute. No such proposition, in our opinion, is laid down by this Court in the said decision. If the said decision is carefully read, it will be clear that the workmen therein relied on certain resolutions passed by all the employees of the company supporting the cause of the dismissed workmen. Further, there was also material on record to show that the cause of dismissed employees was taken up B by a union. It was in view of all these circumstances, added to the fact that the management therein had not challenged those items of evidence, that this Court held in the particular circumstances of that case that there has been a proper espousal of the cause of the dismissed employees so as to make the dispute an industrial dispute. This decision, therefore, does not give any assistance to the appellant.

C In this connection it must be stated that the workmen did not plead even before the Tribunal that any union, representative of the workmen, has taken up the dispute. On the other hand, the sole contention that was raised before the Labour Court for justifying the order of reference was that the espousal of the cause of the dismissed workmen has been by an appreciable number of the workmen of the respondent's establishment. In view of this, it is not necessary for us D to consider whether any union, representative of the workmen concerned, has espoused the cause of the workmen in this case. In fact, we do not find from the judgment either of the single Judge or of the Division Bench that any such plea was even advanced by the workmen. In fact the Labour Court has held that no such plea was taken by the workmen.

E The sponsoring by the 13 dismissed employees will have to be left out of consideration. If so, we are left with the position that the espousal of the dispute, in this case, was only by five out of sixty employees of the respondent-company. It cannot in the circumstances, be held that there has been an espousal of the dispute in this case by an appreciable body of the workmen of the respondent-company so as to make it an Industrial Dispute. The State Government will have jurisdiction to make a reference only if there is an Industrial Dispute. F As there was no Industrial Dispute, the reference made by the State Government has been rightly held by the High Court to be incompetent.

The appeal fails and is dismissed with costs of the first respondent.

V.P.S. *Appeal dismissed.*