

Labour Law

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L.L.B Part- 3rd

Subject- Labour Law

Paper- 6th

Date- 25/07/2020

Topic- Exceptions to the rule that an Individual dispute becomes an Industrial Dispute.

Introduction:

An **individual labour dispute** is a private **dispute** between an employer and an employee which arises under an employment contract. An **individual labour dispute** is also a **dispute** over a claim arising from the preparation of an employment contract.

The **Industrial Disputes** talks about disputes that occurs in an industry. Dispute may arise between 2 or more industries. It also makes provision for the investigation and settlement of disputes that may hamper the peace of the industry. It ensures harmony and cordial relationship between the employers and employees. It also provides various committees and offices for resolution of such disputes that arise among the industries. The Act provides self-contained code to compel the parties to resort to industrial arbitration for the resolution of disputes. It also provides statutory norms besides helping in the maintaining of cordial relation among the employers and employees reflecting socio-economic justice.

Industrial Disputes and Individual Disputes under Industrial Disputes Act, 1947:

Industrial Dispute is “any dispute of difference between employers and employees or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.”

Industrial dispute as defined under Sec. 2(k) exists between-

Parties to the dispute who may be

- Employers and workmen

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- Employers and Employees
- Workmen and workmen

- a) There should be a factum of dispute not merely a difference of opinion.
- b) It has to be espoused by the union in writing at the commencement of the dispute. Subsequent espousal will render the reference invalid. Therefore date when the dispute was espoused is very important.
- c) It affects the interests of not merely an individual workman but several workmen as a class who are working in an industrial establishment.
- d) The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

When An Individual Dispute Becomes An Industrial Dispute:

Before insertion of Section 2-A of the Act an individual dispute could not per se be an industrial dispute, but it could become one if taken up by the Trade Union or a number of workmen. The Supreme Court and majority of Industrial Tribunals held that, a dispute raised by a dismissed employee would not be treated as an industrial dispute, unless it is supported by a trade union or by a body or Section of workman.

For an individual dispute to be declared as an Industrial Dispute, the following conditions are to be satisfied:

1. A body of workmen (trade Union) or a considerable number of workmen, are found to have made common cause with the individual workman;
2. That the dispute (individual dispute) was taken up or sponsored by the workmen as a body (trade union) or by a considerable Section of them before the date of reference.

Bombay Union of Journalists vs. The Hindu^[iii]: A person working in 'The Hindu, Madras' was terminated for claiming as full time employee. The Bombay Union of Journalist raised the dispute. It was found that, there were ten employees of which seven in administrative side and only three in journalism side. Of these three, only two were the members of the union. Therefore, the Supreme Court held that the Bombay Union of Journalists is not competent to raise this dispute. Even if it had raised, it could not have become an industrial dispute.

Workmen of Indian Express Newspapers Ltd. vs. Management Indian Express Newspapers^[iv]: A dispute relating to two workmen of Indian Express Newspapers Ltd, was espoused by the Delhi Union of Journalists which was an outside union. About 25 percent of the working journalists of the Indian Express were members of that union. But there was no union of the journalists of the Indian Express. It was held that the Delhi Union of Journalists could be said to have a representative character Qua the working journalists employed Indian Express and the dispute was thus transformed into an industrial dispute.

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Thus, an individual dispute to fall within the definition of industrial dispute, it must be sponsored by the Trade Union of the workmen or if there is no trade union, it must be sponsored by the majority of the workmen or it must comply with the requirements of Section 2-A of the Industrial Disputes Act, 1947.

Section 2-A provides that “where any employer discharges, dismisses, retrenches or otherwise terminated the services of any individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workmen, is a party to the dispute.”

- Any workman may make an application directly to the labour court or Industrial Tribunal for adjudication of such dispute after the expiry of 3 months when an application was made before the conciliation officer. This has been done to prevent inordinate delay.
- The said application however should be made within 3 years of the date of dismissal, discharge, retrenchment or termination of service.
- The court shall proceed to hear the matter as if it was referred to it U/S 10 of the ID Act.

Section 2A does not declare all individual disputes to be industrial disputes. It is only when a dispute is connected with a discharged, dismissed retrenched or terminated workman that it shall be treated as an industrial dispute. If the dispute or difference is connected with some other matter e.g. payment of bonus/ gratuity etc. then it would have to satisfy the test laid down in judicial decisions. Thus only a collective dispute could constitute an industrial dispute but collective dispute does not mean that the dispute should either be sponsored by a recognized union or that all or majority of the workmen of an industrial establishment should be parties to it.

A dispute is an industrial dispute even where it is sponsored by a union which is not registered but the Trade Union must not be unconnected with the employer or the industry concerned. Where an individual dispute is espoused by union the question of the employee being a member of the union when the cause arose is immaterial. Those taking up the cause of the aggrieved workman must be in the same employment i.e., there must be community of interest when the act complained against happened and not when the dispute was referred to.

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The End