
(2003) 10 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 1914 of 2003

Air India Limited	Vs	APPELLANT
V.M. Mhadgut and S.C. Pandey, Presiding Officer		RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2003) 10 BOM CK 0035

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Sarvasri S.K. Talsania, J. Saluja and M. Kalzunkar, instructed by M.V. Kini and Co, for the Appellant; Shobhana Gopal, for the Respondent No. 1, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Rule, by consent, the rule is made returnable forthwith.

2. The issue sought to be raised in this petition has been already settled by the decision of the Division Bench in Appeal (Lodging) No. 351 of 2003 in the Writ. Petition No. 813 of 2003 along with various other connected matters, disposed of on 30th June, 2003. The issue involved relates to the right of the workman to claim subsistence allowance during the pendency of the application under the Section 33(2)(b) of the Industrial Disputes Act, 1947 and the procedure to be followed by the Court while dealing with an application for interim relief in that regard during the pendency of such proceedings. The Division Bench in the above referred decision has ruled thus:

"Broadly the cases in Tribunal could be categorised in three categories. As far as the first category of cases is concerned, they are cases in which a workman is dismissed for misconduct after due inquiry and on scrutiny by the Labour Court or the Tribunal, as the case may be, also the inquiry is found to be valid. In such cases, there would be no justification for providing payment of subsistence allowance to the workmen concerned. The mandate of the statute is to complete

the proceedings within a period of three months. If in every case application for interim order is filed and on that application considerable amount of time is spent both before the Tribunal and Labour Court and before the High Court, the legislative mandate of early hearing of the application would be completely defeated. In such cases, the Tribunal would be justified in taking up the main application for approval for hearing. But there are cases in which either the domestic inquiry held by the management is set aside on the ground that it was defective or there was only a facade of an inquiry or there was no inquiry at all. But for the procedure evolved by the decisions of the Court in the interest of speedy finalisation of the cases in which the workmen were dismissed from service, by requiring the Labour Court or the Tribunal itself to hold a de novo inquiry, the position would have been, the moment it is established that the domestic inquiry is invalid or there was no domestic inquiry at all, the penalty imposed would have had to be set aside, but without prejudice to the right of the management to hold a de novo inquiry. In that situation, during the period of de novo inquiry, the management may be asked to give subsistence, allowance to the workmen concerned in accordance with the Standing Orders or the rules regulating the condition of service. It is because of the procedure, namely, the holding of domestic inquiry by the Labour Court/Tribunal itself, evolved by the decision of the Court, it has resulted in this situation viz., even as the order of dismissal remains undisturbed, a de novo inquiry is held to find out as to whether dismissal was justified or not. We are of the opinion that if de novo inquiry is ordered to justify the order of dismissal and the matter has been unduly protracted for no fault of the workmen, the Tribunal would be justified in awarding subsistence allowance to the workman in appropriate cases. We, however, hasten to add that the grant of interim relief is not a matter of course and the exercise of such power should be used sparingly and only in deserving cases. "

3. The point sought to be raised being already decided by the decision of the Division Bench in the decision above referred, the petitioners are justified in challenging the impugned order and the same, therefore, cannot be sustained and is liable to be set aside. However, at the same time, as rightly submitted by the learned Advocates for the parties, the entire matter relating to the application under the Section 33(2)(b) of the said Act has already been disposed of by the Court below and, therefore, the question of remanding the matter to the Industrial Court at this stage does not arise, and suffice to quash the impugned order.

4. For the reasons stated above, the rule is made absolute in above terms with no order as to costs.