
(2006) 11 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (Civil) No. 16649 of 2004 and CM 12317 of 2004

Airport Authority of India

APPELLANT

Vs

Pyare Lal and Others

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Income Tax Act, 1961 — Section 220(6), 254

Industrial Disputes Act, 1947 — Section 10, 10(4), 15, 17, 2

Citation : (2006) 11 DEL CK 0028

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Raj Birbal, Divya Jain and Gautam, for the Appellant; K. Prabhakar Rao, for respondents 1 to 16, for the Respondent

Judgement

Manju Goel, J.—Admit.

2. Respondent Nos. 1 to 16, claiming to be workmen in the employment of the petitioner, raised an industrial dispute which was referred to the Central Industrial Tribunal (CGIT for short) with the following terms:

Whether the action of the management of Airport Authority of India, New Delhi in not regularizing the services of the concerned 16 workmen (Sh Pyare Lal and 15 others) from the date of their initial appointment is just, fair and legal? If not, to what relief the 16 workmen are entitled to and from which date?

3. Respondent Nos. 1 to 16 filed a statement of claim, inter alia, making the following prayers:

It is Therefore prayed that this Hon"ble Court may be pleased to pass an award in favor of workmen and against the management directing the respondent to regularize the services of the petitioner workers from the date of their joining the services. It is further prayed that the respondent be directed that till the disposal of this industrial dispute the petitioner workers shall not be removed from the services, in view of Section 33 of Industrial Dispute Act, 1947. Any further order/

orders, which may deem fit under the circumstances, may also please be passed in the interest of justice and for the act of kindness, the petitioners as duty bound shall ever pray.

4. The CGIT on 12.7.2004 passed an order for maintaining status quo. The petitioner applied for vacating the order of status quo. However, no order on the application of the petitioner was ever passed. In the writ petition, this order of status quo is being challenged. The relevant part of the impugned order is as under:

Parties as before, Heard.

Now to come up on 27.7.2004 and for rejoinder document a/d issues status be maintained.

The effect of this order has been to put the respondents in the employment of the petitioner and to continue with them till the order was set aside. It is true that during the pendency of the industrial dispute, the petitioner could not have removed the respondents from service without seeking the approval of the CGIT u/s 33 of the Industrial Disputes Act (the Act for short). But the respondents prayed for an injunction to prevent violation of Section 33 which was granted by the impugned order.

5. The order is challenged primarily on the ground that the CGIT did not enjoy any power to grant any injunction.

6. So far as the power of the Industrial Tribunal is concerned, the respondents, who are defending this order, have placed reliance on the judgment of the Supreme Court in the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, . Reliance is also placed on the judgment of the Supreme Court in the case of *Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* AIR 1969 SC 430. In the case of *The Management, Imperial Hotel (supra)*, the Supreme Court considered the power of the Industrial Tribunal/Labour Court to issue an order of interim relief or to pass an interim award. Certain workmen had been suspended in anticipation of dismissal for which an application for approval u/s 33A of the Act was pending. The Industrial Tribunal ordered that workmen who had applied for interim relief should be paid their wages plus a sum of Rs. 25/- per month per head in lieu of food till the final decision in the matter of the dismissal of these workmen. The Supreme Court considered whether the Tribunal had any such power to grant interim relief. The Supreme Court also considered that award within the definition of Section 2(b) of the Industrial Disputes Act meant an interim or final determination of any industrial dispute or of any question relating thereto. It also considered the provisions of Section 10(4) of the Act and held that the industrial adjudicator could adjudicate on the matters incidental to the reference and so could grant interim relief. The opinion of the Supreme Court is available in paras-21 and 22 of the judgment, which are reproduced below:

21. After a dispute is referred to the tribunal u/s 10 of the Act, it is enjoined on it by Section 15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An "award" is defined in Section 2(b) of the Act as meaning "an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto". Where an order referring an industrial dispute has been made specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters incidental thereto; (Section 10(4)). It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words "incidental thereto" appearing in Section 10(4). There can be no doubt that if, for example question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto u/s 10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.

22. The next question is as to how the tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word "award" shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or of any question relating thereto. Thus it is open to the tribunal to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to the tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by Section 17. Such awards are however not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the tribunal u/s 10(4) with respect to matters incidental to the points of dispute for adjudication.

7. In the case of Mohamed Kunhi (supra), the question was whether the Appellate Tribunal had the power to grant stay as an incidental or ancillary to its appellate jurisdiction. The Supreme Court came to the finding that an express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such grants effective. It held that when Section 254 of the Income Tax Act confers appellate jurisdiction to the Appellate Tribunal, it also impliedly grants the power for doing all acts and employing such means as are essential to the execution of that statutory power. It said as under:

In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so

when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory.

8. Mr. Birbal, learned senior counsel appearing for the petitioner, however, made a distinction between an interim relief as was the case in the Hotel Imperial case from an order of injunction to restrain the respondent from disturbing the status quo. According to him, while an interim relief could be granted in view of the provisions of Section 10(4) of the Act as "matters incidental", the Industrial Tribunal or the Labour Court having not been specifically vested with the power to grant injunction cannot assume the jurisdiction to pass such an order. So far as Mohammed Kunhi's case (supra) is concerned, it is distinguished by him on the ground that the judgment deals with the power of an Appellate Tribunal and not with the power that can be exercised in original jurisdiction by any statutory authority.

9. These two judgments have subsequently been taken note of in various judgments of the High Courts. The judgment on which special emphasis has been placed by Mr. Birbal is that of Dhanalakshmi Bank Ltd. Vs. Parameswara Menon, in which the High Court of Kerala held that Section 33A of the Act does not contemplate grant of anticipatory relief for prevention of any apprehended contravention of Section 33. The workman in that case had prayed for an interim relief in a petition u/s 33A of the Act to restrain the Dhanalakshmi Bank Limited from taking any further proceedings pursuant to a circular issued by the Bank on 23.5.1974 intending to conduct a test for promotion of personnel from clerical cadre to the cadre of junior officers or for direct recruitment to the cadre of executive trainees. The workman therein complained that the Bank had contravened the provisions of Section 33 of the Act by altering to the prejudice of the workmen, the conditions of service applicable to them during the pendency of an industrial dispute. The Industrial Tribunal declined to grant any interim order of injunction on the plea that the Tribunal lacked any such jurisdiction. This order was set aside by the single Judge of the High Court who held that the Tribunal did have the power to pass an order of injunction. The Division Bench, however, held otherwise. The Division Bench took into consideration the opinion expressed by the Supreme Court in the case of The Management, Imperial Hotel (supra) as also in the case of Mohammed Kunhi (supra). It also took note of the subsequent judgment of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another, . Referring to Hotel Imperial's case (supra), the Supreme Court in The Delhi Cloth and General Mills Co.Ltd. (supra) opined as under:

It is clear that in case of a complaint u/s 33A based on dismissal against the provisions of Section 33, the final order which the Tribunal can pass in case it is in favor of the workman, would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the Tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the Tribunal to justify the dismissal: See *The Punjab National Bank Ltd. Vs. Its Workmen*, where it was held that in an inquiry u/s 33A, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the Tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered u/s 33A. Therefore, when a Tribunal is considering a complaint u/s 33A and it has finally to decide whether an employee should be reinstated or not, it is not open to the Tribunal to order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal. The interim relief ordered in this case was that the workman should be permitted to work: in other words he was ordered to be reinstated; in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings u/s 33A. As was pointed out in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order, Therefore, of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must, Therefore, be set aside. We Therefore, allow the appeal, set aside the order of the High Court as well as of the Tribunal dated May 16, 1957, granting interim relief.

10. Following this judgment of the Supreme Court, the High Court of Kerala in *Dhanalakshmi's Case* gave its own opinion as under:

In the present case what the Tribunal was invited by the writ petitioner to grant was an order virtually granting the very relief that had been sought for in the complaint filed u/s 33A, namely, to prevent the Bank from proceeding to make appointments to the cadre of junior officers by promotion and by direct recruitment. Section 33A does not, in our opinion, contemplate the grant of such anticipatory relief for prevention of any apprehended contravention of Section 33. If and when it is established before the Tribunal that there has been, in fact, a contravention of Section 33 by the employer, the Tribunal will, in such event, pass appropriate orders granting effective relief to the workmen so as to obliterate the consequences that may have resulted from the act of the

management performed in contravention of Section 33. It is only to this extent that the jurisdiction of Section 33A stretches. The grant of an interim relief in the nature of injunction is not within the competence of the Tribunal since no such power has been conferred on it by any of the provisions of the Act. The decision in *Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* AIR 1969 S.C.430, relied on by the learned single Judge only lays down that where a power of appeal is conferred on an authority it carries with it by necessary implication the authority to use all reasonable means the exercise of such appellate power effective such as to grant by stay of any proceeding by one party during the pendency of the appeal which would have the effect of rendering the appeal infructuous or ineffective. This principle can have no application to a case like the present one where a special original jurisdiction has been conferred by a statute on the Industrial Tribunal. The scope and ambit of such jurisdiction are to be gathered only from the provisions of the enactment to which the Tribunal owes its very creation.

11. This opinion was followed in a recent judgment of the Bombay High Court in the case of *MRF Ltd. Vs. Goa MRF Employees' Union and Another*, . The opinion of the Bombay High Court is available in paragraphs 24 and 25, which are as under:

24. A perusal of Section 33-A of the I.D. Act by itself would make it clear that the jurisdiction to entertain a complaint is only in the event the employer has contravened any of the provisions. There is no power conferred u/s 33-A to file a complaint in respect of threatened illegal change in the conditions of service. The relevant portion of Section 33-A, reads as under:

Where an employer contravenes the provisions of Section 33 during the pendency of proceedings, before a Conciliation Officer, Board, an Arbitrator, Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner.

25. It is, Therefore, clear that the jurisdiction to entertain a complaint only arises in cases where there is contravention of Section 33 and not apprehended contravention. u/s 33, during the pendency of proceedings, as set out there under, an employer cannot in regard to any manner connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Therefore, the employer's powers as to what he can do or cannot do are set out under Sub-sections (2) and (3). It is, Therefore, clear on reading of Section 33 and Section 33-A that the jurisdiction u/s 33-A is only in those matters which will be covered by Section 33 and or/read with Section 9-A. It is, Therefore, clear that there is no power of granting preventive relief in the Tribunal constituted under the Act.

12. The consistent judicial view that appears from these judgments is that although an Industrial Tribunal/Labour Court can in certain situations pass an interim award, it has no jurisdiction to pass an order of injunction of the nature which a civil court can pass under the provisions of Order 39 of the CPC.

13. It requires to be noted that in the case of Hotel Imperial (supra) the Supreme Court distinguished between interim relief and interim award. Interim award is interim determination of any question relating to the reference whereas interim relief was a relief granted under the power conferred on the Tribunal u/s 10(4) of the Act with respect to the matters incidental to the points of dispute for adjudication. The respondents asked for the relief of prevention of breach of a statutory provision. The same could not have been asked for either by way of an interim award or by way of an interim relief because such a question was neither a part of the question to be adjudicated upon nor incidental to the main question which was whether the petitioners were entitled to be regularized in the service of the petitioner. The respondents asked for a relief which, as discussed above, the CGIT did not have any power to grant under any provision of Section 33 of the Act. Even if the respondents seek protection under the Supreme Court's opinion in the Imperial Hotel's case, their prayer has to be turned down because the prayer of the respondents was not in the nature of an interim relief or interim award when seen in the light of the terms of reference, extracted in the first paragraph of this judgment.

14. The injunction order, a mandatory one, passed by the CGIT has virtually granted the final relief to the respondents inasmuch as the respondents have been secured in the service of the petitioner despite the petitioner's plea that it was not at all the employer of the respondents. In the Hotel Imperial's case the Supreme Court specifically said:

Ordinarily interim relief should not be the whole relief that the workman should get if they succeeded finally.

In fact the Supreme Court did not uphold the interim order in the Hotel Imperial case. It passed a fresh order only for half of the salary as against full salary awarded by the Tribunal.

15. In the present case the respondents have been put in the service of the petitioner and they have also been enjoying the salary and other perks of being servants of the petitioner. Further this has been done without any kind of adjudication on merit even examining the relative pleas of the parties. In my opinion, the impugned order cannot be sustained. The writ petition is allowed and the impugned order is quashed.

16. CM 12317/2004 praying for a stay of operation of the impugned order also stands disposed of.