
(1991) 12 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14906 of 1989 and W.A. No. 1350 of 1991

Andhra Bank Central Office and Others

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 11-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1992) 1 ALT 477 : (1992) 1 AnWR 734 : (1992) 1 APLJ 218

Hon'ble Judges : Sardar Ali Khan, Acting C.J.; Subhashan Reddy, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; Govt. Pleader for Labour for Respondent-1 and A.K. Jayaprakash Rao, for Respondent-2, for the Respondent

Judgement

Sardar Ali Khan, A.C.J.

1. Writ Petition 14906/1989: Andhra Bank, Central Office, Hyderabad is the petitioner in this Writ Petition seeking a Writ of Certiorari calling for the records from the first respondent - Tribunal and quashing the Order passed by it in M.P. No. 24/1987 in I.D. No. 59/1985 on 8-4-1987.

2. The main question arising for consideration in this writ petition is one of jurisdiction of the Industrial Tribunal, Hyderabad in passing the impugned order u/s 33(2)(b) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act").

3. M.P.No. 24/1987 was filed by the Bank u/s 33(2)(b) of the Act stating, inter alia that the respondent (T. Rajendra Prasad) who joined the Bank in Clerical Cadre on 16-6-1981 was placed under suspension and subsequently charge-sheeted for indulging in fraud and misappropriation of Rs. 40,000/- a domestic inquiry was instituted and Inquiry Officer in his report stated that the charges levelled against the respondent were established, and it was proposed to dismiss the respondent from service, and even though it was not necessary, as a matter

of abundant caution, the Bank had filed the application for approval of its decision to dismiss the respondent from service without prejudice to the rights of the Bank. This application was filed in I.D. No. 59/1985 relating to termination of service of another employee of the Bank, and pending at that time before the Tribunal.

4. Essential point arising for consideration is that the Tribunal, while taking cognizance of the fact that in the said application it was clearly stated that the same was filed by the Bank by way of abundant caution seeking approval of the action of the Bank in respect of the respondent herein, failed to record a finding as required u/s 33(2)(b) of the Act.

5. It may not be out of place to reproduce Section 33(2)(a) and (b) of the Act which reads as follows:

(2) "During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman.

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

6. A reading of the above Section makes it clear that during pendency of any proceeding in respect of an industrial dispute, an employer may, in accordance with standing orders applicable to a workman concerned in such dispute, or, where there are no such standing orders, in accordance with terms of contract in the matter, pass orders under Clauses (a) and (b) of Section 33(2) of the Act. It is, therefore, evident that, as a jurisdictional point, it is incumbent upon the Tribunal to record a finding whether the respondent herein can be construed as "a workman concerned in the dispute". In the absence of such a finding, the order impugned is vitiated in the eye of law and is rendered liable to be set aside.

7. In *Digwadith Collieries v. Ramji Singh*, 1964 - 8, *Factories and Labour Reports*, P.456, it is held that, it is necessary that the respondent -workman should satisfy the Tribunal by proving the nature of the dispute pending before the Tribunal before asking it to make a finding in his favour u/s 33(2) of the Act, and in the absence of any such evidence, the Tribunal is not justified in holding that Section 33(2) of the Act applies and has been contravened.

8. In view of the above judicial dictum of the Supreme Court, the principle that is to be deduced is that the Tribunal is required to record a finding u/s 33(2) of the Act as a preliminary point before embarking upon an inquiry on the merits of the case. No doubt, in that case, the Tribunal cast burden of proof on the workman to establish that he came within the expression "a workman concerned in such dispute" as visualised u/s 33(2) of the Act. This case (Ramji Singh's case) is cited with approval in the decision of the Supreme Court in *Tata Iron and Steel Co. v. Singh*, 1965 (II) LL.J 122 (S.C.) Contention raised in that case was that, where judicial decisions differed on the construction of the words "workmen concerned in such dispute", it would be idle and unreasonable to suggest that the employer should make up his mind whether Section 33 applies or not, and if he thinks that Section 33 does not apply, he need not make application; on the other hand, if he thinks that Section 33 applies, he should make an application, but then he cannot be permitted to urge that the application is unnecessary. The Supreme Court held, rejecting that contention, that such a view was wholly illogical and unsatisfactory, and ruled that the Tribunal, in that case, was in error in not considering the preliminary point raised by the appellant therein that the respondent was not "workman concerned", in the main industrial dispute and as such, the application made by it was unnecessary. It may be stated that, in the case before the Supreme Court also, a plea was made on behalf of the management that the application was being filed by way of abundant caution so that there might not be any complication about the action taken by the management against the workman and the same might not expose the management with any penal action. In this case also, the application clearly stated that it was filed by way of abundant caution. Therefore, it was incumbent upon the Tribunal to record a finding before going into the merits of the matter. Similar view has been taken by a learned single Judge of this Court in *A.P. Elec. Equipment Corporation v. B. Veeraiah*, 1989-II A.L.T. P. 308. It was held therein relying upon the above two Supreme Court decisions, that the Tribunal was bound to record a finding whether the respondents therein were, in any way, concerned with the dispute and if the misconduct alleged against them was not connected with the dispute, the Tribunal should have considered according approval for the action of the management. Failure of the Industrial Tribunal to consider the jurisdictional aspect whether the respondents-workmen were concerned with the pending dispute was held to have vitiated the impugned order in that case.

9. In view of the well settled position of law, we allow this writ-petition, set aside the impugned order of the Tribunal dated 8-4-1987 in M.P.No. 24/1987 in ID No. 59/1985 and direct the Tribunal to record a finding with regard to the preliminary point of jurisdiction and then dispose of the case on its merits and in accordance with law. This exercise should be completed within one month from the date of receipt of a copy of this order. No order as to costs. Advocate's fee Rs. 250/-.

Writ Appeal 1350/1991:

10. In view of the orders passed in Writ Petition 14906 of 1989, this writ appeal has become infructuous and the same is accordingly dismissed.