

(2010) 10 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20019 of 2010

Andhra Printers Ltd.

APPELLANT

Vs

The Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1)
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17(1)

Citation : (2011) 1 ALD 616 : (2011) 1 ALT 441 : (2011) 3 LLJ 482

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Hariharan, for the Appellant; GP for Labour for Respondent Nos. 1 to 3 and Mastanvali Shaik, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The fourth Respondent is employed as a Sub-Editor with the Petitioner. It is stated that he was the President of A.P. Working Journalists' Union at Hyderabad. The Petitioner transferred him to Delhi in the year 1997. A civil suit was filed by the fourth Respondent and the same was dismissed. He approached the Deputy Commissioner of Labour, Hyderabad with a prayer to take steps for recovery of a sum of Rs. 5,50,000/- representing his wages and attendant benefits as provided u/s 17(1) of the Working Journalists Act, 1955. The Deputy Commissioner of Labour passed an order, dated 20.06.2003 as prayed for and requested the District Collector to recover that amount.

2. The Petitioner approached the Deputy Commissioner as well as the Joint Commissioner. The order, dated 20.06.2003 was recalled and instead, the Deputy Commissioner addressed proceedings, dated 24.09.2003, to the Government for necessary action; and taking that, and the observations of the Joint Commissioner into account, the Government issued G.O. Rt. No. 2491, Labour Employment Training & Factories (LAB-I) Department, dated 22.12.2003,

referring the matter to the Labour Court, Guntur in exercise of powers u/s 10(1) (d) of the Industrial Disputes Act, 1947 (for short "the Act").

3. The Labour Court registered the matter as I.D. No.15 of 2004. On the ground that the fourth Respondent did not submit his claim statement, the Labour Court dismissed the I.D., on 07.03.2006.

4. The fourth Respondent submitted representations, dated 08.02.2010 and 28.05.2010, to the Additional Commissioner, the second Respondent, stating that the Advocate engaged by him died, he was not aware of that fact and it is only in January, 2010, that he came to know about the dismissal of the I.D.

5. According to him, the award was not sent to him, but was directed to the office of the Petitioner. He made a request to the second Respondent herein, to make a reference. After issuing notice to the Petitioner, the second Respondent passed an order, dated 17.07.2010, making a reference of the dispute to the Industrial Tribunal-I, Hyderabad. The same is challenged in this writ petition.

6. The Petitioner contends that the second Respondent has no jurisdiction to refer the matter, once a reference made to it ended in dismissal by the Labour Court. According to it, the claim of the fourth respondent is stale and it cannot be adjudicated at this length of time.

7. On behalf of Respondent Nos. 1 to 3, a counter affidavit is filed narrating the circumstances under which the reference under the impugned order came to be made.

8. The fourth Respondent filed a counter affidavit stating that soonafter notice was issued in the I.D., he entered appearance and engaged an Advocate; and on account of death of his Advocate, he could not pursue the proceedings. He submits that he was not aware of the subsequent developments. He further submits that though he never worked at Vijayawada or Guntur, reference was made to the Labour Court at Guntur, obviously at the instance of the Petitioner. He contends that no prejudice would be caused to the Petitioner, if reference is made and the claim is adjudicated.

9. Heard Sri V. Hariharan, learned Counsel for the Petitioner, the learned Government Pleader for Labour for Respondent Nos. 1 to 3 and Sri Mastanvali Shaik, learned Counsel for the fourth Respondent.

10. A reference in the first instance, came to be made in the light of the order passed by the Deputy Commissioner of Labour directing recovery of Rs. 5,50,000/- from the Petitioner. The order of the Deputy Commissioner was almost recalled and instead, a reference was made, at the instance of the Petitioner itself. One important aspect of the matter is that the fourth Respondent was working at Hyderabad, the registered office of the Petitioner is at Hyderabad and it is the order passed by the Deputy Commissioner at Hyderabad which became the basis for making reference. However, the reference was made to a Labour Court at Guntur. I.D. No. 15 of 2004, numbered on the

basis of the reference, was dismissed for non-prosecution, in the year 2006. The fourth Respondent categorically stated that he became aware of the order only in January, 2010. His averment that he did not receive the copy of the order remains un rebutted. It is in this background, that he made an effort to get the matter referred to a Labour Court at Hyderabad.

11. His request was acceded to, after issuing notice to the Petitioner.

12. Two contentions are urged by the Petitioner. The first is that the claim has become stale. Reliance is placed on a judgment of the Supreme Court in Nedungadi Bank Ltd. v. K.P. Madhavankutty 2000 Lab I.C. 703. The other is that the second Respondent has no jurisdiction to refer the dispute, which was already referred. According to it, once the power u/s 10 of the Act is exercised and exhausted, it cannot be invoked once again in respect of the same dispute. It is true that the Supreme Court in Nedungadi Bank's case held that though there is no time limit for exercise of power u/s 10, it needs to be exercised within a reasonable period. Had the fourth Respondent approached the second Respondent for the first time in respect of a claim, which has become stale, consequences would have been different. On his part, he was satisfied with the relief granted by the Deputy Commissioner of Labour, through his order, dated 24.09.2003, for recovery of a sum of Rs. 5,50,000/-. It is at the instance of the Petitioner that the reference came to be made. That, however, did not fructify, for variety of reasons. It is the same claim that is sought to be referred, now. Therefore, the ratio laid down in the judgment does not apply to the facts of the case.

13. Coming to the second contention, it is no doubt true that what is made through the impugned order, is a re-reference, that too, to a different Court. However, there is no prohibition in law against such a course; if the intention to give effect to a reference which was made earlier, but did not fructify, it would certainly accord with the spirit of Section 10 of the Act. The Petitioner cannot be said to have suffered any detriment on account of it. The second reference is certainly barred, if the first reference was answered on merits. The learned Counsel for the fourth Respondent placed reliance upon the judgment of the Supreme Court in Virendra Bhandari Vs. Rajasthan State Road Transport Corporation and Others, In that case, the Supreme Court held that if a reference made u/s 10 of the Act did not result in any adjudication on merits, re-reference of the same matter at a later point of time is very much permissible u/s 10 of the Act. Therefore, no exception can be taken to the order impugned herein.

14. Hence, the writ petition is dismissed. There shall be no order as to costs.