

(1984) 02 KL CK 0040
In the High Court Of Kerala

Annamma Thomas

APPELLANT

Vs

T. Joseph

RESPONDENT

Date of Decision : 16-02-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 17A, 19, 33C, 4

Citation : (1984) 2 LLJ 208

Hon'ble Judges : Bhaskaran, Acting C.J.; Balakrishna Menon, J

Bench : Division Bench

Judgement

Balakrishna Menon, J.—Both the writ appeal and the O.P. arise out of proceedings initiated by the 1st respondent for relief u/s 33-C(2) of the Industrial Disputes Act, 1947.

2. The 1st respondent was a Supervisor of the petitioner's estate. He was discharged from service on 20th April, 1964. An Industrial Dispute was raised by the Union of which the employee is a member and the Industrial Tribunal, Calicut, by its award dated 21st December, 1974 in I.D. No. 118 of 1964 directed reinstatement of the employee with backwages. The award of the Industrial Tribunal was published in the gazette dated 11th February, 1975. The petitioner challenged the validity of the Award in O.P.No. 1815 of 1975 before this Court. It is admitted by both sides that the O.P. was dismissed confirming the award of the Industrial Tribunal. Thereafter the employee filed Ext. PI application before the Labour Court, Quilon, u/s 33-C(2) of the Industrial Disputes Act claiming backwages upto the date of the award and also future wages till 30th April, 1975, at the rate of Rs. 300/- per mensem. Ext. P2 dated 12th September, 1975 is a copy of the objections filed by the 1st respondent wherein he has refuted the employee's claim for future wages for the reason that he had not reported for duty after the award of the Industrial Tribunal. He had also disputed the quantum of wages claimed. According to him the employee was entitled only to wages at the rate of Rs. 2.50 per day for six days in a week. Exts. P3 and P5 were similar petitions filed by the employee for future wages for the periods from 1st May,

1975 to 1st December, 1975 and from 1st December, 1975 to 30th January, 1979 respectively. Exts. P4 and P6 are copies of objections filed by the petitioner in answer to Exts. P3 and P5. As per Ext. P7 order dated 12th November, 1979, the 2nd respondent, the Labour Court, Ernakulam held that the employee is entitled not only to backwages from the date of discharge but also to future wages from the date of the award of the Industrial Tribunal. The Labour Court however found on the basis of the evidence in the case that his wages were only at the rate of Rs. 2.50 per day for six days a week and awarded backwages at that rate for the period upto 1st April, 1970 and at the rate notified under the Minimum Wages Act for the period subsequent to 1st April, 1970, on which date the notification in respect of persons of the category to which the employee belonged, had come into force. The Labour Court overruled the petitioner's plea that the employee was not entitled to future wages for the reason of his failure to report for duty after the date of the award by the Industrial Tribunal. It was found that the employee had filed a petition before the District Labour Officer for implementation of the award claiming reinstatement and backwages. Ext. P4 dated 20th July, 1977 produced before the Labour Court was the notice of the conciliation proceedings issued to the 1st respondent for a Conference to be held at the Office of the District Labour Officer on 5th August, 1977. The 2nd respondent on the basis of Ext. P4 held that since the employee had requested for implementation of the award requiring also reinstatement in service, his claim for future wages cannot be negated on the ground that he had not reported for duty after the award in his favour. O.P.No. 310 of 1980 challenging the validity of Ext. P7 order was dismissed by a learned Single Judge of this Court and Writ Appeal No. 75 of 1983 is filed against the said decision.

3. O.P.No. 4538 of 1983 is against Ext. P5 order of the Labour Court dated 14th March, 1983 directing payment of wages to the employee from 1st February, 1979 to 31st March, 1980. Ext. P5 order produced in O.P.No. 4538 of 1983 was passed on the basis of the decision in Ext. P7 order produced in O.P.No. 310 of 1980 wherein it was held that the employee is entitled to future wages from the date of the award of the Industrial Tribunal.

4. Counsel for the petitioner concedes that the employee is entitled to wages until the date of the award and the employer has no objection in directing payment of the same. The dispute is relating to the employee's claim for future wages from the date of the award. learned Counsel points out that in Ext. P2 objection filed by the employer before the Labour Court in answer to Ext. P1 he had raised a specific plea that the employee is not entitled to future wages for the reason of his failure to report for duty after the award for reinstatement was passed by the Tribunal. learned Counsel relies on the decision of the Supreme Court in *Bombay Steel Rolling Mills Ltd. and Ors. v. Khemchand Rajkumar Steel Mills and Pahorpur Yards Labour Union*, Calcutta 1964 XI L.L.J. 120, In that case under the terms of a settlement, the employer had agreed to take back in service the workmen on their acquittal in the criminal proceedings pending against them. Meanwhile the workmen were to remain on suspension and were to be paid

subsistence allowance. Some of the concerned workmen were acquitted. They did not report for work or ask for reinstatement within a reasonable time after their acquittal. Their demand for reinstatement months later was declined by the employer. The Industrial Tribunal adjudicating the dispute directed their reinstatement. In appeal by special leave, the Supreme Court held that on the failure of the workmen to report for duty within a reasonable time after their acquittal, in terms of the settlement, they were precluded from claiming reinstatement as it would be neither fair nor reasonable to ask the Management to comply with their demand. The Supreme Court at page 122 stated as follows:

The settlement of 4th May, 1957 entitled the workmen to reinstatement on their final acquittal in the criminal cases. Even apart from such settlement there would be a good case for their claim of reinstatement as soon as they had been acquitted. But if after such acquittal the workmen preferred to remain away and did not ask for work, it is neither fair nor reasonable to ask the management to comply with the demand for reinstatement made months and months after such acquittal. During this long period the employer has naturally employed new workmen and in the special circumstances of this case that fact cannot be altogether ignored. The reinstatement ordered by the Tribunal cannot therefore be sustained. For the same reason the Tribunal's order for payment to these workmen of suspension allowance till the date of their reinstatement must be set aside.

learned Counsel for the petitioner relies also on the decision of a learned single Judge of the Madras High Court in *Peer Mohamed & Co., Madras v. Mohamed Hussain and Anr.* 1968 XI L.L.J. 98, wherein it is stated at page 100:

It is not the duty of the employer to take steps to invite the employee in pursuance of the order of a Tribunal setting aside the termination order passed by the employer; but it is the duty of the employee concerned either to claim or inform in writing that he is ready and willing to join the service within a reasonable time or to give a notice that he should be reinstated failing which he would be taking legal proceedings against the employer. In the absence of any of these things, the employer is under no legal obligation to take steps to reinstate the employee who was dismissed by him but subsequently restored to his job by the order of the Tribunal. It is also reasonable that such an employee should express his readiness to join service under the employer within a reasonable time.

In the present case, the Labour Court as well as the learned single Judge have taken the view that the employee had expressed his readiness and willingness to be reinstated in service as per proceedings initiated by him before the District Labour Officer evidenced by Ext. P4 notice of conciliation proceedings issued to the employer. The employee prayed for implementation of the award which would include his reinstatement and it cannot be said that the Labour Court and the learned single Judge were wrong in taking the view that the prayer for implementation would necessarily involve an intimation by the employee of his

readiness and willingness to be taken into service of the employer. Even though the award of the Industrial Tribunal is dated 21st December, 1974 and published in the gazette dated 11th February, 1975 the conciliation proceedings are seen initiated only in 1977. It is however conceded that the employer had challenged the validity of the award in O.P.No. 1815 of 1975 before this Court and this Court had ultimately dismissed that O.P. Neither party has produced a copy of the judgment in O.P.No. 1815 of 1975, nor is there anything to show the date on which that O.P. was dismissed. The employee had reasonable grounds to believe that his offer for reinstatement would be of no use pending the O.P. challenging the validity of the award. He cannot therefore be denied reinstatement for the reason of his failure to report for duty during the pendency of O.P.No. 1815 of 1975. Nevertheless, it was necessary for him to have expressed his readiness and willingness to work under the employer to enable him to earn future wages. Such a claim was made only by the proceedings evidenced by Ext. P4 produced before the Labour Court and the employee is entitled to future wages from 20th July, 1977 the date of Ext. P4 notice, in the absence of any other evidence of an earlier intimation by the employee of his readiness and willingness to work. Even though the award was under challenge before this Court, there was no order of stay of implementation of the award. The employee should have therefore reported for work or should have at any rate expressed his willingness to work despite the pendency of the O.P. to enable him to earn future wages. In absence of such an expression of willingness prior to Ext. P4 the employee is not entitled to wages for the period from the date of the award till the date of Ext. P4. An employee who does not offer his services is not entitled to earn wages. The intimation contained in Ext. P4 cannot however be held to be unreasonably belated for the reason that the employer had challenged the validity of the award before this Court in O.P.No. 1815 of 1975 and it cannot be said that it is unreasonable on the part of the employee to have waited until the award had become final. The relief for future wages from the date "6T Ext. P4 cannot therefore be denied to the employee for the reason of the delay in expressing his readiness and willingness for reinstatement or for reporting for work under the employer. We therefore hold that the employee is entitled to future wages from 20th July, 1977 onwards and he is, not entitled to wages for the period from 21st December, 1974 to 19th July, 1977.

5. learned Counsel for the petitioner submits that the award of the Industrial Tribunal passed on 21st December, 1974 has become unenforceable after the lapse of the period of one year mentioned in Sub-section (3) of Section 19 of the Industrial Disputes Act. There is no substance in this contention is clear from Sub-section (5) and (6) of Section 19 of the Act. Sub-section (3), (5) and (6) are extracted below:

(3). An award shall, subject to the provisions of this Section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17-A;

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit;

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) xx xx xx (5) Nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has lapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

6. The Supreme Court in the decision in South Indian Bank Ltd. Vs. A.R. Chacko, stated thus at page 22.

(6) It is said that the non-obstante clause "Notwithstanding anything contained in the Industrial Disputes Act, 1947 makes the provisions of Section 19(6) inapplicable to the Sastry Award and so the provision there that the award shall continue to be binding on the parties until a period of two months had elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award, does not come into operation. To this objection two answers are available. The first is that there is difference between an award being in operation and an award being binding on the parties. The different provisions made by the Legislature in Section 19(3) and Section 19(6) illustrate this distinction. u/s 19(3) the award remains in operation for a period of one year.

After quoting Section 19(6) it is stated at page 22:

(7) This makes it clear that after the period of operation of an award has expired, the award does not cease to be effective. For, it continues to be binding thereafter on the parties until notice has been given by one of the parties of the intention to terminate it and two months have elapsed from the date of such notice. The effect of Section 4 of the Industrial Disputes (Banking Companies) Decision Act is that the award ceased to be in force after 31st March, 1959. That however has nothing to do, with the question as to the period for which it will remain binding on the parties thereafter. The provision in Section 19(6) as regards the period for which the award shall continue to be binding on the parties is not in any way affected by Section 4 of the Industrial Disputes (Banking Companies) Decision Act, 1955.

In the Law of Industrial Disputes, Third Edition, Vol. 1, by Malhotra and Malhotra, it is stated thus at page 1225:

There are two types of awards. The awards of the first type are which decide the questions under reference once and for all. For instance, the awards involving personal rights e.g upholding the discharge or dismissal of workmen or directing reinstatement of a discharged or a dismissed workman for victimisation or any other unfair labour practice; or the awards dealing with questions like transfer, legality or justifiability of lockouts or strikes etc.(c). In such cases, the question of period of operation of the award as contemplated by Sub-section (3) does not arise as the dispute under reference is decided once and for all by the award of the adjudicator. Such awards do not cast any continuing obligation on the parties bound by the award. The awards of the second type are those which cast continuing obligations on the parties bound by them. For instance, the awards dealing with the wage-structure, dearness allowance, gratuity and other allowances and benefits etc. Sub-section (5) makes Sub-section (3) applicable to the awards of the former type- From a combined reading of Sub-section (3) and (5) it is clear that these two provisions apply only to an award which, after pronouncement and publication, continues to impose obligations on the parties making it necessary to know for what period it would be in operation under Sub-section (3)(d). Furthermore, by implication of the words "subject to the provisions of this section" in Sub-section (3), Sub-section (4) and Sub-section (6) also become inapplicable to such awards because in such awards there is no question of the period of operation as the questions in dispute have been decided once for all. Sub-sections (3), (4), (6) and (7) deal with the period of operation of the second type of awards because the obligation under such awards being of continuing nature, the period of their operation is a material consideration. After the period of operation of such awards is over, it is for the parties themselves to consider whether the obligations should be continued, revised or rescinded.

7. A Division Bench of this Court in the decision in *Kumaraswami (Nagercoil Electric Supply Corporation) v. South Travancore Electric Workers' Union and Ors.* 1958 XI L.L.J. 72 stated thus at page 73:

We may however also point out that in our view, Section 19(3) does not provide a period of limitation for enforcement of an award, but that it only states (subject to the other provisions in the section) for how long an award shall remain in force or continue to bind the parties. In this context we may quote with advantage the observations of Serjoo Prasad, C.J., in *G.C. Berbazua v. State of Assam* AIR 1954 Gau 161 ;

The Section 19(3) says that an award shall, subject to just exceptions, remains in operation for a period of one year. The period of one year may have expired but the liabilities or obligations incurred under the award may still continue to subsist. It would be too much to assume that with the expiration of the award liabilities already incurred are at an end.

8. Where the termination of services of an employee is set aside, he should be deemed to be in continuous service is no longer open to doubt. In the decision of the Supreme Court in *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, , it

is stated thus at page 1262:

But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case.

9. From these authorities cited above, it is clear that an award of the Industrial Tribunal declaring the termination of service of an employee as invalid and inoperative and directing reinstatement with backwages does not cease to be in force after the period of one year mentioned in Sub-section (3) of Section 19.

10. As per the Award of the Industrial Tribunal dated 21st December, 1974 in I.D.No. 118 of 1964 the discharge of the employee from service of the petitioner has been found to be invalid and he is directed to be reinstated in service with backwages. The consequence of such a declaration as is contained in the award is that the employee continues to be in service of the petitioner with all consequential benefits. An employee in service is not however entitled to wages unless he is prepared to work and offers his services to the employer. Once the termination of service has been set aside, the employee should report for duty and offer his services within a reasonable time after the award has been passed in his favour. If he fails to report for duty within a reasonable time, he should be deemed to have abandoned his claim for reinstatement and the employer will no longer be bound to provide employment for him. The employee will also be entitled to wages only from the date on which he has intimated his willingness to work to the employer and is prepared to make his services available to him.

11. In the present case we have already found that the employee is not entitled to wages from 21st December, 1974 to 19th July, 1977 for his failure to report for duty or intimate his willingness to work after the award. We have also found that he should be deemed to be in continuous service and cannot be denied future wages from 20th July, 1977 for the reason of the delay in intimating his willingness to work. We, therefore set aside Ext. P7 order produced in O.P.No. 310 of 1980 and direct the Labour Court, Ernakulam to recompute the wages due to the employee at the rate found by that Court for the periods covered by Ext. P7 order and pass fresh orders directing payment of the same to him, as expeditiously as possible and at any rate within three months from the date of receipt of a copy of this judgment by the Labour Court.

W.A.Nos. 75 of 1983 is allowed to the above extent and dismissed in other respects. O.P.No. 4538 of 1983 is dismissed. The parties will suffer their respective costs.