
(1999) 06 AP CK 0076
In the Andhra Pradesh High Court
Case No : WA No. 776 of 1999

APSRTC National Mazdoor Union, Hyd. APPELLANT
Vs
Management of APSRTC and Another RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1999) 4 ALD 130 : (1999) 4 ALT 136 : (1999) 2 LLJ 1293

Hon'ble Judges : M.S. Liberhan, C.J;G. Raghuram, J

Bench : Division Bench

Advocate : Mr. A.K. Jayaprakash Rao, for the Appellant; Mr. C.V. Ramulu, SC for APSRTC and Government Pleader for Labour, for the Respondent

Judgement

M.S. Liberhan, CJ

1. The APSRTC National Mazdoor Union has preferred this appeal assailing the judgment of the learned single Judge dated 7-4-1999 in WP No.28653 of 1998. The 1st respondent herein filed the writ petition seeking a writ in the nature of certiorari to invalidate the award dated 4-4-1998 in ID No.I of 96 on the file of the industrial Tribunal-1, Hyderabad to the extent of items 24, 31, 32, 42 and 56, considered in the award.

2. The relevant facts are that the appellant herein raised 72 demands, which were referred by the Government to the Industrial Tribunal. By the award dated 4-4-1998, the Industrial Tribunal accepted 66 demands. Aggrieved by the acceptance of demands Nos.24, 31, 32, 41 and 56, the writ petition had been filed by the APSRTC.

3. By the judgment under appeal the learned single Judge has partly allowed the writ petition. The award of the Industrial Tribunal insofar as demands 24 and 56 has been confirmed; the finding of the Industrial Tribunal in respect of demands 31, 32 and 41, has been set aside and remanded to the Industrial Tribunal for

consideration of the matter afresh in the light of the observations made in the judgment, fixing a time limit for the said purpose. Status quo as on the date of the judgment has also been directed pending such adjudication of the Tribunal. Assailing the setting aside of the findings of the Industrial Tribunal in respect of demands 31, 32 and 41 and remanding the same to it for reconsideration the appeal has been filed.

4. In the hearing of the appeal it is urged that the learned single Judge transgressed the parameter's of judicial review in invalidating the findings of the Industrial Tribunal and directing reconsideration, as above.

5. Demand No.31 of the appellant is "to construct staff quarters at Paderu Depot on priority basis." Learned single Judge, on consideration of the record of the award of the Tribunal, found that neither of the parties adduced any evidence to disclose the number of employees working in the Depot, the number of quarters required and the financial capacity of the Management to construct the quarters. Treating it as a case of "no evidence" the learned single Judge invalidated the finding of the Tribunal and remanded the matter for fresh reconsideration according the parties an opportunity to adduce evidence in support of their respective contentions in relation to this demand. Nothing has been urged in the appeal to demonstrate that the findings of the learned single Judge on this aspect of the matter is erroneous, or that the finding is contrary to record in the award. The appellant has not shown that any evidence exists in support of the demand disclosing the particulars referred to by the learned single Judge. It is a settled principle of law that the findings of the Tribunal are susceptible to judicial review and invalidation on the ground being based on "no evidence", a finding based on "no evidence" would be perverse finding and liable to be invalidated under Article 226 of the Constitution, The order of the learned single Judge on this aspect of the matter thus suffers from no error of law or jurisdiction.

6. Demand No.22 is "to absorb the gardners working at ZWS/VZM as regular workers". Demand No.41 is for "abolition of contract system for absorption of personnel now involved in the work". Learned single Judge considered the challenge in the writ petition to both these demands together. The relevant jurisdictional facts as considered by the learned single Judge for interfering with the decision of the Industrial Tribunal in respect of these two demands are as under :

The State of Andhra Pradesh in G.O. Ms. No.287, LEN & TE (Lab-11), dated 7-5-1981, prohibited employment of contract labour in all factories in the State of A.P. in respect of process of operations specified in the said G.O. Clause 5 of the said G.O. specifying the operations in respect of which contract labour is prohibited relates to-

"5. Persons engaged in automobile garages and workshops inside the factory where the work is continuous."

This order of the State Government is issued in purported exercise of the power

available u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970). The appellant herein contended before the learned single Judge that in terms of the said G.O. contract labour has been prohibited in respect of the said operations in the automobile garages and workshops of the APSRTC and consequently the finding of the Industrial Tribunal that the contract labour working in depots or workshops should be treated as regular employees, is correct and unassailable in judicial review. The APSRTC, however, contended that the work in the Depots or workshops is not continuous and thus the provisions of the said G.O. are inapplicable. As a part of the same submission, it was contended that the Industrial Tribunal was obligated to decide the jurisdictional fact whether the depots or workshops of APSRTC fall within the meaning of garages or workshops specified in Clause 15 of the said G.O. and further whether the work therein is continuous, warranting invocation of the consequences of the prohibition of contract labour.

7. Learned single Judge, on an examination of the record of the award of the Industrial Tribunal, found that the applicability or otherwise of the provisions of Clause 5 of G.O. Ms. No.287 has not been urged to adjudication, by either of the parties. A copy of the G.O. was however filed before the Tribunal and the Tribunal proceeded on the assumption that the G.O. is applicable to APSRTC. The Tribunal has neither referred to the provisions of the said G.O. nor is there any discussion with regard to Clause 5 thereof. Learned single Judge also found on perusal of the record, that the respondents in the writ petition (appellant herein) has not claimed that the G.O. is applicable to the Depots or Workshops and that since the Tribunal proceeded on the assumption of the applicability of the G.O. without any discussion thereof, the matter is a fit one for invalidation. Consequent on this reasoning, learned single Judge invalidated the findings of the Industrial Tribunal in respect of demands 32 and 41 and remanded the matter for consideration afresh, granting liberty to the respective parties to produce relevant material for consideration of the issue whether the provisions of G.O. Ms. No.287 are applicable to the Depots and Workshops of APSRTC and if so, to what effect.

8. On consideration of the matter we are of the considered view that the analysis of the provisions of G.O. Ms. No.287 by the Industrial Tribunal is an essential ingredient to determine the demands of the appellant. The applicability or otherwise of the said G.O. to the Depots or Workshops of the respondent-Corporation is a jurisdictional fact, the determination of which alone entitles the grant of any relief in favour of the appellant herein. Absent any analysis, discussion or finding on this essential jurisdictional question by the Industrial Tribunal, the findings in respect of demands Nos.32 and 41, would be invalid as rightly held by the learned single Judge. We are thus unable to discover any error in the application of law or discretion by the learned single Judge and none has either has been pointed out by the appellant herein warranting interference in appeal.

9. Needless to say that any observations regarding merits of the disputes

between the parties either by the learned single Judge or in this appeal, are only in the context of considering the parameters of judicial review and are not entitled to be a pronouncement on the issues which are relegated by the judgment of this Court for consideration afresh by the Industrial Tribunal, which shall proceed to consider the same on their own merits.

10. In the light of the above discussion we find no merits in the appeal, which is accordingly dismissed, but in the circumstances of the case without costs.