
(1957) 09 MAD CK 0055
In the Madras High Court

Arya Bhavan (By C.M. Sharma)	APPELLANT
Vs	
Seetharaman (S.) (Madras City Hotel Workers' Association)	RESPONDENT

Date of Decision : 04-09-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 2 LLJ 680 : (1957) 70 LW 946

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—The petitioner is the proprietor of a restaurant known as the Arya Bhavan, who has however since closed down his business. The dismissal of the Janardhana Bhatt in 1953 led to an industrial dispute between the petitioner and his workmen, and that dispute was referred for adjudication to the industrial tribunal, Madras. The tribunal gave its award on 27 January 1954 directing the reinstatement of the dismissed workman. On 25 February 1954 the petitioner preferred an appeal against the award to the Labour Appellate Tribunal. That appeal was eventually registered as appeal No. 88 of 1954.

2. Even before the petitioner preferred an Appeal, the petitioner dismissed on 14 February 1954 the first respondent, Seetharaman, another of the petitioner's employees, for misconduct; the charge was that the first respondent was unpunctual in his attendance. In July 1954 the first respondent Applied to the Appellate Tribunal u/s 23 of the Industrial Disputes (Appellate Tribunal) Act (Act 48 of 1950), alleging that his dismissal was in contravention of Section 22 of that Act. The proceedings were transferred to the Chairman, Central Government Industrial Tribunal, Madras, the second respondent. By his order dated 31 March 1956, the second respondent directed the reinstatement of the first respondent with 50 per cent of the wages due for the period during which the first respondent was kept out of employment.

3. The petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the second respondent dated 31 March

1956.

4. The first contention of the learned Counsel for the petitioner, that Section 23 of the Act could not have been invoked at all by the first respondent in the circumstances of this case, is well founded. Therefore neither the Appellate Tribunal nor the second respondent had any jurisdiction to grant any relief on an application purported to have been made u/s 23 of the Act. It is true that this point was not specifically urged in the proceedings before the second respondent, but the error of jurisdiction is one apparent on the face of the record, to be decided with reference to the relevant dates which are not in dispute. The second respondent recorded in his order:

Since the management did not get written permission from the Labour Appellate Tribunal for dismissing the worker it is a clear contravention of the provisions of Section 22 since appeal No. 88 of 1954 is pending on the date of dismissal.

That was a clear misreading of the relevant dates. The appeal was presented only on 26 February 1954, and Section 17 of Act 48 of 1950 should have made it clear that the appeal should be deemed pending only on and after 26 February 1954 when the appeal was filed. The dismissal was on 14 February 1954, anterior to the commencement of the pendency of the appeal.

5. As the learned Counsel for the petitioner pointed out, it is not every contravention of Section 22 that falls within the scope of Section 23. To invoke Section 23 in this case, it must be established that the contravention of Section 22 was during the pendency of proceedings before the Appellate Tribunal. In the present case the dismissal of the first respondent was no doubt in contravention of Section 22, because it was within the period of thirty days allowed for filing an appeal, but that contravention of Section 22 was not during the pendency of proceedings before the Appellate Tribunal.

6. The Labour Appellate Tribunal also was of the same view on the scope of Section 23 in *Northern India Oil Industries, Ltd. v. Badri Prasad* 1954 I.L.J. 455.

7. On this short ground the order of the second respondent dated 31 March 1956 will have to be set aside as one passed without jurisdiction.

8. The rule is made absolute and the petition is allowed. No order as to costs.