
(2001) 06 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 2410 of 1999

Augustine

APPELLANT

Vs

Menon and Pai

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 22

Citation : (2001) 1 KLJ 1001

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : A.X. Varghese, for the Appellant; P.F. Thomas, Sunil Thomas, Joji Suni, A.K. Rani and Jose Thettayil, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Sankarasubban, J.—This Writ Appeal is filed against the judgment of a learned single Judge in O.P. No. 7672 of 1999. Petitioner is the appellant. The original petition was filed for a writ of mandamus directing the second respondent to proceed with Ext. P1 petition submitted by the petitioner under Sec. 12 of the Industrial Disputes Act and for a writ of certiorari or other appropriate writ or order to quash Ext. P2 letter issued by the second respondent. According to the petitioner, he was working under the third respondent-M/s. Menon and Pai, Advocates, Kochi-18 as Stenographer since 1957 continuously without any interruption. On 29-2-1998, the third respondent- firm orally informed the petitioner that he need not be continued from March 1998 onwards. No written order, notice or communication has been issued to the petitioner. The petitioner continued his work till 21st April, 1998. According to the petitioner, the third respondent Firm is an industry coming within the definition of the Industrial Disputes Act.

2. According to the petitioner, the third respondent denied employment to the petitioner without any reasons. It is further stated that the third respondent denied his wages for the period he had worked after February, 1998. In such

circumstances, the petitioner sent lawyer notice to the third respondent demanding to pay all benefits like terminal benefit, salary due, medical benefit, etc. In para. 5 of the original petition, it is averred that the petitioner raised a dispute regarding the illegal termination of his service, before the second respondent- District Labour Officer, Ernakulam, under Sec. 12 of the Industrial Disputes Act. That petition is produced as Ext. P1. But instead of initiating conciliation proceedings with regard to Ext. P1 petition, the second respondent issued a letter to the petitioner informing that the petitioner can file a claim petition for any claim directly before the Labour Court, copy of which is produced as Ext. P2. In the Original Petition, the petitioner submitted that the second respondent has a statutory obligation to entertain Ext. P1 petition. If a workman or an employee having valid grievances raised a dispute before a statutory authority, the authority has a legal obligation to look into it and proceed in accordance with the relevant provisions. The second respondent ought to have realised the fact that the question whether the termination of service is legal or not is to be decided by a competent court of law. Hence, the original petition was filed as stated above.

3. It appears that the original petition was disposed of at the admission stage by the learned single Judge. In para. 2 of the judgment, it is stated that the learned Government Pleader would say that the petitioner has completed 65 years and what he claims is terminal benefits. Learned counsel for the petitioner would deny it. In para. 4 of the judgment, it is stated that the petitioner sent a lawyer notice to the third respondent demanding to pay all benefits like terminal benefit, salary due, etc. Thus, the learned single Judge came to the conclusion that the claim was for terminal benefits and hence there was no necessity to refer the dispute under the Industrial Disputes Act. Hence, the Original Petition was dismissed. It is against the above judgment that the Writ Appeal is filed.

4. In the appeal, a counter affidavit was filed on behalf of the third respondent. In para. 3 of the counter affidavit, it is stated as follows: "During the latter part of 1997 and the earlier part of 1998, the petitioner was refusing to take dictation from any one other than C.M. Devan, another senior partner of the Firm. In terms of the practice prevalent in the Firm, all Stenographers are expected to take dictation from any partner or Associates of the Firm. On account of this, the petitioner was informed that he should meet the senior partner of the Firm before receiving his salary for the month of March, 1998. Accordingly, the petitioner met the senior partner, but stuck to his position that he would not take dictation from the said senior partner. Since he was a person with fairly long service in the Firm, no disciplinary action was taken against him.

5. On 25th April, 1998, the petitioner went on leave for one or two days. Thereafter, he did not turn up in the office. He left on his own volition. The counter affidavits referred to the notice sent by the petitioner to the third respondent and the reply sent for that. Along with the counter affidavit, Exts. R3 (a) to R3(f) have been produced. Ext. R3(f) is a communication sent to the

District Labour Officer. Ernakulam in reply to his communication. The third respondent has stated in detail as to what happened.

6. We heard learned counsel for the petitioner Sri. A.X. Varghese, learned counsel for the third respondent Sri. P.F. Thomas and the learned Government Pleader for the District Labour Officer.

7. Learned counsel for the petitioner Sri. A.X. Varghese contended that a statutory duty is cast on the conciliation officer when a petition is filed before him. According to the learned counsel, Ext. P1 will show that the petitioner had clearly stated that the termination was bad and that the petitioner should be reinstated in service. The petitioner has claimed wages for the period for which he had worked.

8. Sri. P.F. Thomas, learned counsel for the third respondent, on the other hand contended that the petitioner left the service on his own volition. He had been serving the Firm for a large number of years and two Life Insurance Policies were taken in his name. He had already received payment under one policy and the other policy was also kept upto date by the Firm. It was further submitted that if any amount is due to the petitioner, he can approach the Labour Court and file a petition. Regarding the Gratuity also, if any amount is due to him, he can approach the appropriate authority. The contention taken by the respondent was that no claim under Sec. 12 of the Industrial Disputes Act can be entertained.

9. Section 12 of the Industrial Disputes Act states as follows:

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Sec. 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full settlement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement

could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

From Sec. 12 of the above Act, it can be seen that when once a complaint comes to the notice of the District Labour Officer or the Conciliation Officer, he has to see whether the grievance is redressed. In the present case, what has happened is that Ext. P1 is a petition sent to the District Labour Officer. In Ext. P1, the petitioner had clearly stated that he could be reinstated in service. Further it is stated that no reasons are given while denying employment. In the reply given by the third respondent to the District Labour Officer, the case adopted is that he voluntarily went on leave. Thus, there is dispute between the parties. What the District Labour Officer has done is that he has considered the claim petition as only for monetary benefit and said that the claim petition can be filed before the Labour Court and for Gratuity, the claim can be filed under the Payment of Gratuity Act.

10. According to us, whatever may be the communication between the parties, in Ext. P1, there is a claim for reinstatement. There is also an allegation that the termination was in violation of the principles of natural justice. In the above circumstances, it was the duty of the Conciliation Officer to see whether the dispute could have been settled. Instead of that what the District Labour Officer has done is to direct the petitioner to file a claim petition under the Industrial Disputes Act. A claim petition lies only if the status is admitted. So also, it is true that a person can apply under the Payment of Gratuity Act. But that is not the real question in issue. The real question in issue is whether the Conciliation Officer could have avoided the conference by raising certain grounds, which were not admitted by the complainant. Under Sec. 12 of the Industrial Disputes Act, where any industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a notice under Sec. 22 has been given, shall, hold conciliation proceedings in the prescribed manner. The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come in a fair and amicable settlement of the dispute. Ultimately, a report shall be filed by the petitioner within fourteen days. We further state that the respondent has even denied the status of the petitioner as workman. After giving our anxious consideration of the entire matter, we are of the view that the Writ Appeal has to

be allowed. Accordingly, the Writ Appeal is allowed. The judgment of the learned single Judge is set aside. The Original Petition is allowed directing the second respondent to initiate conciliation proceedings on the basis of Ext. P1 and submit an appropriate report to the Government. We make it clear that we have not decided the question whether the third respondent is an industry or the petitioner is a workman.