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**(1966) 06 AP CK 0002**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 886 of 1963**

Benaras Hall

APPELLANT

Vs

The Labour Court, Guntur and Another

RESPONDENT

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**Date of Decision :** 17-06-1966

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 10(1), 15

**Citation :** AIR 1968 AP 136 : (1967) 15 FLR 314

**Hon'ble Judges :** Narasimham, J

**Bench :** Single Bench

**Advocate :** K. Srinivasamurthy and B.S. Krishna Reddy, for the Appellant; 3rd Govt. Pleader and K. Satyanarayana, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

1. This is a petition under Article 226 of the Constitution of India questioning the award of the Presiding Officer, Labour Court, Guntur in Industrial Dispute No 24 of 1962.

2. The said award was passed on a reference by the Government of Andhra Pradesh that an industrial dispute existed between the workman, Shri K.V. Ramaniah, represented by the Nellore District Shops and Establishments Employees' Union and the management of the Benaras Hall, Nellore, the employers. The petitioner herein is the management of the Benaras Hall, the employers. The workman, Shri K.V. Ramaniah, the second respondent in this Writ Petition, it is said, absented himself of his own accord and so, his services were terminated by the management on 12-12-1961. The said workman thereafter complained to the President of the Nellore District Shops and Establishments Employers' Union. The said complaint was signed by K.V. Ramaniah and four others, G.V. Subba Rao, K. Rajagopal, P. Ramamurthy and V. Venkata Krishniah. On the report of the Labour Officer to the Government of Andhra Pradesh, a reference was made to the Labour Court u/s 10(1)(c) of the Industrial Disputes

Act, 1947. The matters referred were, (1) Whether the termination of services of Shri K.V. Ramaniah is justified and (2) if not, to what relief is he entitled. The Labour Court, by its award, gave a finding against the management and directed reinstatement of Ramaniah with back wages.

3. The learned Counsel for the management has contended in support of this Writ Petition that the award is unsupportable. In the main, he has argued that it is not proved by evidence that there was an industrial dispute which could be referred under the Act. He has also urged that, even if there was an industrial dispute, the award of back wages in full was wrong as, in his counter. K V Ramaniah has stated that he had been employed elsewhere from 1-4-1962 as a salesman on a salary of Rs. 50 per month and as such his earnings as such salesman should be deducted from back wages due to him otherwise.

4. On the main contention that there was no industrial dispute, the learned Counsel has argued that the dispute was not sponsored on the date of reference namely, 19-5-1962 by any of the employees in the service of the management. He has also argued that there is no evidence as to how many members of the Union, which sponsored the cause of Ramaniah, were workers in the management concerned and that the sponsoring is not made clear by a resolution or other evidence. He would, therefore, contend that the cause of Ramaniah whose services were terminated is not shown to have been sponsored by any of the co-workers under the management concerned or by the members of the Union connected with the establishment. In the absence of proof thereof, he would have it that the dispute was an individual dispute and not an industrial dispute and that, therefore, the reference itself was bad.

5. On this main question, the Presiding Officer relied only on Exhibit W-8 dated 16-9-1961 for saying that the worker's cause was sponsored by four coworkers of the establishment concerned. But, it does not appear that he considered this aspect with reference to the date of reference. There is no mention in the award as to how far the Nellore District Shops and Establishments Employees' Union had competently sponsored the cause of the workman concerned.

6. The question when an individual dispute could be an industrial dispute within the meaning of the Act has been considered elaborately by the Supreme Court as well as by this Court and other Courts and more or less it can be said that the law is settled.

7. In the case of *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, the Supreme Court observed thus at page 442:-

"In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen."

If this test is applied, it is at once seen that the date of reference is the material date with reference to which it has to be said if the cause of the worker is espoused by an appreciable number of workmen under the management concerned.

8. In a case where another Union of of workers, not belonging to the management concerned, sponsors the cause of a worker, the following observations of the Supreme Court in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, are relevant.

"But in a given case, it is conceivable that the workmen of an establishment have no Union of their own and some or all of them join the Union of another establishment belonging to the same industry. In such a case, if the said Union takes up the cause of the workmen working in an establishment which has no Union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute because the Union which has sponsored it is not the Union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference- in regard to the dismissal of an industrial employee is validly made or not it would always be necessary to enquire whether the Union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute."

On this aspect of the matter, this Court has adopted the observations in *Visalakshi Mills Ltd. Vs. Labour Court and Another*, at p. 95 (Mad) as a correct position in law, vide *Tirupathy Cotton Mills Ltd. v. The Labour Court, Guntur*, W. P. No. 808 of 1965, D/- 11-2-1966. The observations in the case of *Visalakshi Mills Ltd. Vs. Labour Court and Another*, may be usefully set out here for convenience:

"In such a case not only should it be proved that the workmen who are members of the general union formed a substantial or a considerable section of the workmen of the particular mills, but also that in order to vest the dispute with the character of an industrial dispute, those members participated in or acted together and arrived at an understanding, either by a resolution or by other means, and collectively supported on the date of the reference the demand or the cause of an individual dispute. In ascertaining whether there is such a collective expression and support, reference to workmen of other establishments who happened to be members of the general union will be Irrelevant, for, it is one of the requisites of an industrial dispute that the workmen who decide to support an individual dispute should be workmen of the employer concerned, and should also have a direct and substantial interest in the dispute raised."

9. The Labour Court has, therefore, to ascertain these facts which are necessary to come to the conclusion that the cause of the worker concerned is espoused by the *Nellore District Shops and Establishments Employees" Union* in circumstances which converted the individual dispute as an industrial dispute.

10. The finding of the Labour Court, without reference to these material facts,

cannot therefore be supported.

11. The other point raised is also to be considered in the event of a finding that an Industrial dispute has been referred to the? Labour Court.

12. There is sufficient authority to support the contention that the wages actually learned by the worker employed elsewhere have to be deducted, vide *Mehta Brothers Vs. Amar Singh and Others*, ; *Rakeshwar Dayal Vs. Labour Court and Others*, and *United Bleachers v Labour Court*, 1964 II L LJ 156 .

13. The award is, therefore, set aside as it is vitiated by errors apparent on the face of the record and the matters raised before me will be gone into afresh by the Labour Court and disposed of according to law.

14. The result is that the Writ Petition is allowed with costs. Advocate's fee Rs 100.

15. The learned Counsel, Shri K. Srinivasa Murthy and Shri C. Appa Rao have represented before me and are agreed that the amount now lying in deposit with the Labour Department to the credit of this award could be withdrawn by the management. Ordered accordingly.