

(1966) 11 MAD CK 0012
In the Madras High Court

Coimbatore-Salem Transport (Private) Ltd.	APPELLANT
Vs	
Their Workmen and Another	RESPONDENT

Date of Decision : 29-11-1966

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10A

Citation : (1968) ILR (Mad) 450 : (1967) 2 LLJ 120 : (1967) 80 LW 236

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

Ramakrishnan, J.—This is a writ petition under Article 226 of the Constitution directed against the award of respondent 2, Commissioner of

Labour, on a reference made under S. 10A of the Industrial Disputes Act, in a dispute that arose between the petitioner herein, the management of

a bus transport company at Erode, and respondent 1, certain workmen of the abovesaid company represented by their union. The dispute in the

present case is In regard to four employees by name, Kullappan, Narasimhan, Sreerangan and Usman. In the case of Kullappan, the points

referred to the arbitrator for adjudication were:

- (1) Is the non-employment of M. Kullappan justified ?
- (2) To what relief he is entitled ?

The finding of the arbitrator was that Kullappan while travelling on duty on 26 October 1960 as bus conductor suffered a severe accident Involving

fracture in the leg: and it led to his hospitalization. For about one year thereafter, the management was paying wages to Kullappan but thereafter the

payment of wages was discontinued. There is, however, reference to the fact that

the Insurance company was paying him some amounts till November 1962. Kullappan appears to have written to the management that his disability made him unfit to do the work of a conductor in which post he was employed at the time he sustained the accident, but he might be appointed as a checking Inspector. But the management replied to him on 4 August 1962 that the two jobs were not dissimilar and that if he was not fit to do work as a conductor, he would be equally unfit to do the work of a checking inspector and that they were prepared to give him employment as booking-clerk at Erode. Thereafter, the worker wrote to the management on 10 November 1962, stating that he had become quite well, that he was prepared to join duty after producing a fitness certificate and that he should be posted as a conductor. The management replied to this letter on 11 November 1962, stating that he could not be appointed as a conductor or checking inspector and that since he was not prepared to accept the post of a booking-clerk, they were rejecting his application for appointment. The management took the view that this correspondence showed that the worker's appointment had been terminated long since and that he was actually applying for re-employment. But the arbitrator accepted the contention of the worker and held that there was no formal order at any time terminating the worker's employment till November 1962, when the management told him specifically that if he would not accept the job offered as booking-clerk, they would not give him any employment, The arbitrator expressed the opinion that, in the above circumstances, where the worker was not willing to accept the post of a booking-clerk offered to him by the management, the termination of his employment by the management, in November 1962, must be deemed to be a valid termination. Thereafter, by way of relief the arbitrator ordered the management to pay Kullappan the arrears of back-wages till 20 November 1962 besides retrenchment compensation on the basis of his services up to 20 November 1962.

2. In the case of Narasimhan, Sreerangan and Usman, the points referred to the arbitrator for decision were:

(1) Whether their non-employment as conductors with effect from certain specified dates was justified?

(2) To what relief they were entitled?

In the case of both Narasimhan and Sreerangan the management had dismissed them for misappropriation of small amounts out of ticket

collections from passengers. But the arbitrator found that the offence in their cases was purely technical. The shortages had occurred in many

similar Instances in the past, but the rule about strict accounting had not been enforced in such cases by the management and that consequently the

arbitrator held that in spite of the finding that the workers concerned had committed the offence from a technical point of view, the management

ought to have let them off with fines or loss of wages and should not have terminated their employment. In the case of Narasimhan, the arbitrator,

while upholding the order of termination of employment, directed the management to pay him retrenchment compensation together with six months"

consolidated pay as additional compensation. In the case of Sreerangan, after coming to a similar conclusion about the technical nature of the

offence, the relief arbitrator gave him was by way of retrenchment compensation but not additional cash compensation. In the case of Usman, the

charge was that he had overloaded the bus on a certain day. The arbitrator observed that the charge was proved in his case but the nature of the

offence justified the award of a light punishment and though in such circumstances he would have ordered the worker's reinstatement he was

awarding, Instead, retrenchment compensation as well as six months" consolidated wages by way of cash compensation.

3. The argument pressed before me by the learned Counsel appearing? for the management, who is the petitioner in this writ petition, is that in the

case of Kullappan the data afforded by the correspondence that passed between him and the management prior to November 1962, would show

that his appointment had come to an end long previously and that what he was seeking from the management was really an order of fresh

appointment. But the arbitrator came to a different conclusion on the data that Kullappan's appointment was not really terminated till November

1962. This is a question of fact on which the arbitrator is entitled to come to his own conclusion and it cannot be corrected in writ proceedings. As

the learned Counsel for respondent 1 points out, in Kullappan's case the relief awarded by the arbitrator is really for the back-wages prior to the

termination of his services as well as retrenchment compensation, and that cannot be considered to be beyond the scope of the dispute regarding

the entitlement of relief, which was also referred to the arbitrator for decision. At the same time, learned Counsel for the petitioner also urged that

the arbitrator, after finding that the termination of the services of the worker by the management was Justified, acted without jurisdiction in any

event, in awarding retrenchment compensation. I will consider this point along with a similar point urged in the case of the other three employees,

regarding the nature of relief awarded by the arbitrator.

4. Learned Counsel for the petitioner referred to a series of decisions dealing with awards of labour tribunals and labour courts which held that

where the labour court or tribunal found that the order of dismissal of a worker by the management is justified, it had no jurisdiction thereafter to

award relief by way of compensation and that the question of awarding such relief will only arise in cases where there is a previous finding that the

dismissal of the worker was not justified. Pudukkottah Textiles, Ltd. v. A. Subramanyam 1958 I L.L.J. 74 and Hattiali Tea Estate v. Labour

Court, Assam A.I.E. 1962 Gua. 105, were some of the decisions cited in this connexion. It was urged In the case of Sreerangan and Narasimhan

that in view of the finding that they have misappropriated collections, the arbitrator should not have directed the management to pay them amounts

by way of cash compensation or consolidated wages as the case may be. After upholding the order of termination of service in the case of Usman,

likewise, the order for payment of compensation equal to six months' consolidated wages was based on the finding not that the dismissal of Usman

was Improper, but that the punishment meted out to him was too severe and that in giving such a direction the arbitrator acted without jurisdiction.

5. Before considering these points, I will advert to one preliminary objection raised by the learned Counsel for respondent 1 that the reference in

the present case being one u/s 10A of the Act, based on the voluntary submission of the management and the workers to abide by the arbitrator's

award, the arbitrator thereafter functions only as a non-statutory body, and his decision cannot be made the subject-matter of a writ proceeding

under Article 226 of the Constitution. Reference was made to the judgment of Srinivasan, J., in Anglo-American Direct Tea Trading Co. Ltd. v. its

workmen 1963 II L.L.J. 762, where the learned Judge followed an earlier decision of the Kerala High Court in A.T.K.M. Employees"

Association Vs. Musaliar Industries (Private), Ltd. and Another, , and came to the conclusion that the award of an arbitrator, in similar cases,

cannot be made the subject-matter of proceedings for the Issue of a writ of certiorari or mandamus. Having expressed his opinion in this manner,

the learned Judge, nevertheless, went into the merits of the contentions urged before him and gave a decision. Per contra learned Counsel for the

petitioner referred to the decision of the Punjab High Court in The Rohtak Delhi Transport (Private) Ltd., Rohtak Vs. Ch. Risal Singh and

Another, , where a Bench of that Court has given a contrary opinion. In that decision, it is laid down that the decisions of the arbitrator in a

reference u/s 10A of the Industrial Disputes Act are quasi-judicial decisions and that the award of the arbitrator should ex facie show the reasons

on which It is based and If the arbitrator has exercised uncontrolled or arbitrary power to make the award completely bare of reasons, the High

Court can Interfere under Article 226 of the Constitution, Between these two views, there seems to be an Intermediate view laid down by the

Supreme Court In The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind

Cycles Ltd., Bombay, . There, the Supreme Court was dealing with the question whether an arbitrator appointed u/s 10A of the Industrial

Disputes Act would be a tribunal within the meaning of Article 136 of the Constitution with a right of appeal to the Supreme Court against the

award. The Supreme Court came to the conclusion that he is not such a tribunal and that no appeal under Article 136 of the Constitution would lie,

but, at the same time, it recognizedi½

(1) that the decisions of an arbitrator u/s 10A of the Industrial Disputes Act are quasi-judicial decisions, and

(2) from the circumstance that the arbitrator appointed u/s 10A Is clothed with certain powers, his procedure is regulated by certain rules and the

award pronounced by him is given statutory and binding character for a specified period, it may perhaps be possible to describe him, in a loose

sense, as a statutory arbitrator.

In view of the above statement of the Supreme Court and also bearing in mind the decision of the Punjab High Court it seems to me to be safer in

such cases not to reject outright a plea that the award of an arbitrator appointed

u/s 10A of the Act is outside the scope of the writ jurisdiction of this Court under Article 226 of the Constitution. As long as the power that he exercises is recognized as a quasi-judicial power and his decisions have got the validity of affecting the rights inter se between the worker and the management, the discretion of this Court to interfere in proper cases under Article 226 of the Constitution must be recognized.

6. However, the arguments for the petitioner, in the present case, involved the basic assumption that the second point referred to the arbitrator for decision, namely, the nature of the relief, would follow strictly from a decision on the first point as to whether the dismissal of the worker concerned was justified or not. The argument proceeds on the assumption that if the arbitrator gives an award upholding the decision of the management under the first point with or without any qualifications he should also uphold the decision of the management in the matter of depriving the workman of all relief whether on the short ground that the discretion as to punishment lies with the management and the arbitrator can interfere only where that discretion has been used in such a harsh and oppressive manner as to lead to an inference of mala fides. But, in the present case, I am of the opinion that the reference being a voluntary one by the parties of their own accord, the arbitrator had a wider freedom in adjudicating upon both the points referred to him for decision, and this freedom would include an adjudication upon the merits of the punishment awarded and whether it cannot be mitigated by suitable relief. It may not be proper; while dealing with an award of an arbitrator u/s 10A of the Act, on a voluntary reference to arbitration, to whittle down his discretion in the matter of assessing the quantum of punishment in the same way as in the case of an award by a labour court or a tribunal. Examined from this point of view, it appears to me that, in the present case, the arbitrator took into account not merely the actual factum of termination of the services of the workman concerned, but also the circumstances surrounding it, for the purpose of moulding the relief to be granted to the workman under the second point referred for his decision. In each case the arbitrator has given reasons for tempering the punishment with mercy, bearing in mind the entire background of the case, I am not prepared to say that the discretion exercised in this manner, together with the reasons given therefor, is fit for being corrected in

these writ proceedings, which are dismissed. There will be no order as to costs.