
(1999) 11 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21915 of 1999 and Batch

Commissioner, Ongole Municipality, Ongole

APPELLANT

Vs

Kunchala Sreenu and another

RESPONDENT

Date of Decision : 09-11-1999

Acts Referred:

Andhra Pradesh Administrative Tribunals Act, 1985 — Section 15(2)

Constitution of India, 1950 — Article 137, 226

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 1 ALD 97 : (2000) 1 ALT 161 : (2000) 85 FLR 836

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. E. Sambasiva Pratap, SC for Municipalities, for the Appellant; Mr. D. Srinivas for B. Venkateswara Rao and Government Pleader for Labour, for the Respondent

Judgement

1. In all these matters, the Commissioner, Ongole Municipality is the petitioner. The petitioner is aggrieved by the Award passed by the 2nd respondent dated 3-6-1999 in 11 ID cases filed by the former workmen of the Municipality claiming the relief of reinstatement with back wages. The facts offered and the evidence led all the 11 IDs., were the same. Therefore, the same documents were marked in each ID and the same witnesses were examined. However, 11 different awards on the same day i.e., 3-6-1999 were passed directing the petitioner to reinstate the workmen with 50% back wages and attendant benefits. As mentioned at the out set, the writ petitions are filed for a writ of certiorari to quash the award passed by the 2nd respondent. When the matters were listed for admission before me, Sri D. Srinivas, representing Mr. B. Venkateswara Rao, submitted that caveat petitions are filed by the workmen and hence they may be heard. I have heard the learned Counsel for the Employer/Commissioner, Ongole Municipality and the Workmen and with their consent, the matters are being disposed of by this common order at the Admission stage.

2. For the purpose of noticing necessary facts, I may take up Writ Petition

No.21926 of 1999 filed against ID No.53 of 1996 dated 3-6-1999. The Public Health Department was running a water supply scheme called Improved Water Supply Scheme since the beginning of 1990. The first respondent/workman was appointed by the Executive Engineer, Public Health Department on 1-1-1991 as NMR worker. He was paid daily wages. The water works under the control of the Public Works Department was transferred to the Petitioner/ Municipality on 5-11-1991 and since then it is being operated by the Municipality. On 15-10-1991, the Municipal Council passed a resolution resolving to take over the water supply scheme from Public Health Department and also resolved to continue the workman and others like him in the same water works as NMR employees subject to the condition of getting approval from the Director of Municipal Administration. As no approval was granted, the Commissioner of the Municipality disengaged the services of the workmen with effect from 5-2-1992. Aggrieved by this action, the workmen raised Industrial Disputes u/s 2-A(ii) of the Industrial Disputes Act, 1947 (hereinafter called the Act). In the claim petition before the Industrial Tribunal, the main contention of the workmen was that the termination/ disengagement of the workmen is contrary to the provisions of the Act. The workmen prayed for reinstatement and other consequential benefits.

3. The claim was opposed by the petitioner/Municipality on the ground that the provisions of the Act are not applicable to the workmen in view of the special enactment viz., Andhra Pradesh Municipalities Act, 1965, that as there is no appointment order appointing the workmen as NMRs in the Municipality and as there is no approval from the Director of Municipal Administration, they need not follow the provisions of the Act.

4. The Labour Court, the 2nd respondent herein, examined two witnesses WW1 for the workmen and MW1 for the management and marked 21 documents, Exs.W1 to W21 for the workmen. After consideration of the entire evidence, the 2nd respondent recorded a finding that the workmen continuously worked from 1-6-1990/1-1-1991 till 5-2-1992, that the workmen have worked for more than 240 days in the preceding 12 months, and, therefore, termination of their services without compliance with the mandatory provisions of Section 25-F of the Act, is illegal. Therefore, the Labour Court passed the award ordering reinstatement of the workmen with continuity of service and ordered payment of 50% of back wages. The Labour Court also relied on the judgments of various High Courts in Patiala Central Co-operative Bank Limited, Patiala v. Mehar Chand and another 1998(1) LLJ 1142, M.D. Sri Ganganagar Saliakari Spinning Mills Limited v. Labour Court, Bikaner and others 1998 (1) LLJ 523, and also a judgment of the Apex Court in Gammon India Limited Vs. Niranjana Dass, .

5. In this writ petition filed against the award of the Industrial Tribunal, the learned Standing Counsel for the Petitioner-Municipality, Mr. E. Sambasiva Pratap, has raised two main contentions. First, he submits that the workman along with others has approached the Andhra Pradesh Administrative Tribunal by

filing OA No.872 of 1992 which was disposed of directing the Municipality to consider his case along with others for regularisation and hence the workmen are not entitled to approach the Industrial Tribunal. Secondly it is contended that the finding of fact recorded by the Industrial Tribunal that the workman has worked for a period of more than 240 days within 12 months in the preceding year is perverse. It is further submitted that the water works department was taken over by the Municipality only with effect from 5-11-1991 and as the services of the workmen in the municipality were utilised till 5-2-1992, it cannot be said that the workmen have worked continuously for 240 days. Lastly it is submitted that in view of the notification issued by the Government of Andhra Pradesh u/s 15(2) of the Andhra Pradesh Administrative Tribunals Act, 1985, all the service matters concerning the Municipalities come within the jurisdiction of the Andhra Pradesh Administrative Tribunal and, therefore, any case before the Industrial Tribunal is not maintainable.

6. The learned Counsel for the respondent/workmen has submitted that filing of OA, by the workman before the Andhra Pradesh Administrative Tribunal is not a bar for the workmen to approach the Industrial Tribunal. Nextly, it is contended that when two different enactments provide for two different - remedies, it is for the aggrieved party to choose any of them and in this case, the workman has chosen the Industrial Tribunal and, therefore, there cannot be any illegality on that score.

7. Having regard to the rival contentions, the points that arise for consideration are these;

(1) Whether the finding of fact recorded by the Industrial Tribunal that the workman has worked for a period of more than 240 days is perverse and based on "no evidence"?

(2) Whether the Industrial Tribunal has no jurisdiction to entertain the ID and give relief to the workman who has also other remedy before the Andhra Pradesh Administrative Tribunal?

(3) To what relief? :

In re point No. 1 :

As noticed earlier, the Industrial Tribunal relied on the evidence of MW1 who is the employee of the Municipality and Ex.W13 and came to the conclusion that the workmen continuously worked from 1-6-1990/1-1-1991 with the Public Health Department and after that when the water works department was handed over to Ongole Municipality, the workmen continuously worked from 6-1-1991 till their termination on 5-2-1992 and recorded a finding that the workmen continuously worked for more than 240 days in the preceding 12 months and, therefore, they are entitled to the protection u/s 25-F of the Act. The learned Standing Counsel for the petitioner is not able to show any perversity in the finding recorded by the Industrial Tribunal. Further, the Industrial Tribunal, after

appreciating the oral and documentary evidence came to a reasonable conclusion. However, it is submitted by the learned Standing Counsel for the petitioner that the period the workman has worked with the Public Health Department till 6-11-1991 cannot be reckoned for the purpose of calculating 240 days. This submission is without merit. Section 25-F of the Act reads as follows:

"25-F. Conditions precedent to retrenchment of workmen of workmen :--No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) a workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette".

A reading of the provision makes it very clear that the stress is on the "employment in industry". Though the latter part of Section 25-F speaks of employment under a employer, it is important to notice that clauses (a) and (b) of Section 25-F do not make such distinction. The compensation is paid to the workman who worked in the establishment/industry/unit. The provision is not concerned with the employment or change in the employment. It is not the case of the petitioner that after the water works department is handed over to the Ongole Municipality, the petitioner herein, the workmen were deputed to work in any other Water Works Department or other branch of the Municipality. The workmen continuously worked even after 6-11-1991 in the same Water Works which was handed over by the Public Health Department to the Petitioner/Municipality. Therefore, if the provision is to be interpreted as suggested by the learned Standing Counsel, it would result in absurdity. There could a case where to defeat the very purpose and object of Section 25-F of the Act, an employer may transfer his works as per law to other employer and the transferee employer may deny the benefits flowing from Section 25-F of the Act. Therefore, the enactment is not seriously concerned with the change of the employment or change in the employer. The provision is more concerned with the continuous service for not less than one year in any industry under an employer. In fact the words "under an employer" appearing in Section 25-F are superfluous and while interpreting the effect of entire Section 25-F, it is always permissible to ignore the phrase "under an employer" as superfluous. Accordingly, I hold that the finding recorded by the Industrial Tribunal is not perverse and it cannot be said that the finding is not based on evidence. In this context, it is useful to refer to the observations of the Division Bench of this Court in *The Depot Manager,*

APSRTC Vs. P. Gangarajulu and Another, , wherein it was observed as follows:

".....It is well settled that a finding could be said to be perverse only if it can be held that no reasonable man, in the facts and circumstances of the case would reach to that conclusion as reached by the lower Court/Tribunal. There is no such finding by the learned single Judge. Findings based upon surmises and conjectures, no doubt, cannot be said to be the findings based upon evidence. But the question would be as to whether there is any evidence and materials on record and if so, whether the said materials and record were taken into consideration and the available evidence was properly appreciated by the Labour Court. If the materials are not taken into consideration and the evidence is not properly appreciated by the Labour Court, the same is liable to be corrected by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. But in the process, this Court cannot substitute its own opinion and arrive at a finding after going into the evidence..."

8. The observations of the Division Bench (supra) support my conclusion that the finding recorded by the Industrial Tribunal is not vitiated by perversity or for want of evidence. It is settled that judicial review of a finding with reference to finding of fact recorded by the disciplinary authority or the Industrial Tribunal or labour Court, is limited. In Bank of India and Another Vs. Degala Suryanarayana, , the Supreme Court dealing with the case of Departmental enquiry, reiterated the law as under:

"The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court..."

9. The scope of judicial review vis-a-vis the award of the Industrial Tribunal was considered by a learned single Judge of this Court in Maheshwar Rao P. Vs. Presiding Officer, Labour Court and Another, . The learned single Judge held as follows;

"....It is quite often reiterated by the Apex Court and the High Courts that the High Courts, while reviewing the awards of the Industrial Tribunals and the Labour Courts, cannot go into the question of adequacy or inadequacy, sufficiency or insufficiency of the evidence on the basis of which the charges are held to have been proved, and if they find that the findings are grounded on some substantial acceptable evidence, the findings cannot be upset. The High Courts in exercise of their powers under Article 226 of the Constitution cannot

reappreciate evidence and record a finding on a question of fact different from the one recorded by the Industrial Tribunals and the Labour Courts even in a case where two views are possible from the same evidence. Reappraisal of evidence is the power of the Industrial Tribunals and the Labour Courts and not of the High Courts...."

10. Therefore, it is well settled that ordinarily the High Court does not substitute its opinion with the opinion recorded by the Industrial Tribunal. Even where two views are possible on an appreciation of the evidence, it is always better for the High Court, to leave the finding recorded by the Industrial Tribunal uninterrupted unless there is glaring perversity. In the case as noticed above, I do not find any unreasonableness or perversity in the finding recorded by the 2nd respondent. Therefore, point No.1 is decided against the petitioner and in favour of the workman.

In re point No.2:

Admittedly, the workman filed a OA along with others before the Andhra Pradesh Administrative Tribunal. The Administrative Tribunal disposed of OA No.872 of 1992 with a direction to the Director of Municipal Administration to consider the cases of the workmen in accordance with rules. The same was not considered and, therefore, the workmen approached the Industrial Tribunal complaining violation of provisions of Section 25-F of the Act. On the strength of this factual situation, the learned Standing Counsel would submit that as the workman approached the Industrial Tribunal (sic Administrative Tribunal), the workman need to pursue the same remedy. This Court does not feel persuaded by the said submission made by the learned Standing Counsel. The effect of regularisation or instatement by the Municipality, no doubt, results in bringing into force, the relationship of Master and Servant. From this point of view, this service matter is undoubtedly within the purview of the jurisdiction of the Andhra Pradesh Administrative Tribunal. The other side of the coin is that in water works scheme, which includes purification of water and supply of water to the residents of the Municipality, is an industry and the persons who work in that Department are, nevertheless, "workmen" within the definition of Section 2(s) of the Act. A person who is both an employee for the purpose of Government Service and also a workman with reference to the industry is entitled to seek such remedy as is available to him. I may even say that a person is entitled to choose a remedy which is more beneficial to him. Presumably, the workmen have chosen the Industrial Tribunal having regard to the provisions of Section 11-A of the Act. Therefore, the submission of the learned Standing Counsel is rejected and the point is answered accordingly.

11. Before ordering the relief in these proceedings, another aspect of the matter is that as submitted by the learned Standing Counsel for the petitioner, the 2nd respondent has not exercised jurisdiction u/s 11-A of the Act properly. Except ordering 50% of the back wages no reasons are forthcoming. Be that as it may, the learned Counsel Sri D. Srinivas appearing for Mr. B. Venkateswara Rao, while

not seriously disputing the position, however, submitted that the Court under Article 226 of the Constitution, may as well decide the matter. In this context, I may again refer to Mahaswara Rao's case (supra). His Lordship, Justice S.R. Nayak dealing with the exercise of discretion u/s 11-A of the Act laid down as follows:

"....It is well settled that the discretionary orders passed by the Labour Courts and the Industrial Tribunals should not be interfered with lightly by the High Courts though what the Industrial Tribunals and the Labour Courts may, in their discretion, do u/s 11-A of the Act, the High Courts too, under Article 226 can, if facts compel, do as held by the Supreme Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ."

12. Therefore, it is settled that the High Court, in its power under Article 226 of the Constitution of India is competent to exercise its powers u/s 11-A of the Act while reviewing the award passed by the Industrial Tribunal. I am of the considered opinion that this is one such case where this Court should exercise its powers u/s 11-A of the Act.

13. The workman was admittedly discharged on 5-2-1992. However, he chose to approach the Industrial Tribunal in 1996 by filing the ID u/s 2-A(ii) of the Act. In a recent binding pronouncement of the Supreme Court in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , dealt with the question of applicability of Article 137 of Schedule I of the Limitation Act, 1963. The Apex Court held that the Limitation Act is not applicable to Industrial Dispute. The Dispute raised by a workman cannot be rejected on the ground of delay or as barred by limitation. The Supreme Court further held as follows;

"The provisions of Article 137 of the Schedule to limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workmen merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. "The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

14. Following the above principle, as the workmen raised the Industrial Dispute with a delay of about four years, I deem it appropriate to restrict the back wages to 25%. In fact, Mr. D. Srinivas fairly submitted that 50% of the backwages could be reasonable and if the delay in approaching the Industrial Tribunal is not explained, 25% of the back wages could be reasonable. As the workman is not able to explain the delay in approaching the Industrial Tribunal after 4 years, the

back wages are restricted to 25%.

15. For the reasons stated hereinabove, the writ petitions are disposed of confirming the award of the 2nd respondent insofar as reinstatement and continuity of service are concerned. But the workmen shall be entitled only to 25% of the back wages. The award of the Industrial Tribunal stands modified accordingly. The Petitioner/ Municipality is directed to reinstate the workmen with continuity of service and pay 25% of the back wages with attendant benefits. There shall be no order as to costs.