

(1969) 01 MAD CK 0031
In the Madras High Court

Dayagee Agarwal

APPELLANT

Vs

Engineering Metal and General Workers' Union and Another

RESPONDENT

Date of Decision : 07-01-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10A, 12, 17, 17A, 18

Citation : (1969) 2 LLJ 367 : (1969) 82 LW 489

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

Ramakrishnan, J.—The point in controversy in this writ petition under Article 226 of the Constitution is a brief one. The petitioner is the proprietor of a concern called Hospital Equipment (Manufacturing) Company. Respondent 1 is the Engineering Metal and General Workers' Union, represented by its president. According to the contention in the affidavit of the management, five workers, Subramaniam, Venkatesan, Mahalingam, Devaraj and Thangaraj, on the expiry of their sick leave, were due to join duty on certain dates specified, in May 1965 but they did not join their duty on those dates or at any subsequent time. They absented themselves without leave. Subsequently respondent 1 union on their behalf wrote a letter on 15 May 1965 containing a false allegation that when the workers reported for work the management refused to give them employment and sent them away. The management duly replied to the communication on 25 May 1965 denying the allegation. Correspondence then ensued between the management and the labour union and the matter was brought before the labour officer for the purpose of conciliation of the dispute, u/s 12 of the Industrial Disputes Act. On 12 October 1965 a memorandum of settlement was drawn up u/s 12(3) of the Industrial Disputes Act, 1947, between Sri K.S. Janakiraman for the workers and the management to the following effect:

1. The management and the union agree to abide by the decision of the Commissioner of Labour, or his nominee in respect of the non-employment of the following workers.

* * *

Issues

(1) Whether the non-employment of Thangaraj, Devaraj, Mahalingam, Venkatesan and Subramaniam is justified; if not to what relief they would be entitled ?

(2) Both parties agree that the decision of the arbitrator shall be binding and shall be treated as a term of this settlement for all purposes.

2. This settlement was signed by the employer as well as by the representative of the union.

3. The nominee of the Labour Commissioner was the Deputy Commissioner of Labour and he gave a decision after hearing both the parties and their arguments, on 8 March 1966, holding that the non-employment of the above workers was not Justified and that they would be entitled to reinstatement with continuity of service and that for the period of their non-employment they should be paid one half of the total wages inclusive of the usual allowances. The management have attacked this decision of the arbitrator in the present writ proceedings. The main ground is that the arbitrator did not give full opportunity to the management to lead evidence but dealt with the matter in a perfunctory manner. The management, therefore, wants to quash the decision of the arbitrator by a writ of certiorari under Article 226 of the Constitution.

4. At the time of the hearing of the writ petition, it was admitted by the learned Counsel for the management, that viewing the decision of the arbitrator as decision to which the Arbitration Act, 1940, would apply the management had filed a petition in the City Civil Court, Madras (which has been numbered as an original petition) for the purpose of setting aside the decision of the arbitrator on several grounds which could be urged for that relief under the Arbitration Act. The learned Counsel appearing for the workmen conceded that it was a fact that such a petition has been filed and that it is pending.

5. It is common ground between the parties, at the time of the hearing of the writ petition, that the decision of the arbitrator in the present case is not an award following a reference of a dispute to arbitration u/s 10A of the Industrial Disputes Act. Certain formalities have to be observed u/s 10A and one of them is that the arbitration award should be submitted to the Government who should publish it u/s 17 of the Act, u/s 17A of the Act it will become enforceable on the expiry of thirty days from the date of the publication. It is admitted by both the parties that the above procedure has not been followed in the case of the decision of the Deputy Commissioner of Labour in the present case. In fact none of the several formalities mentioned in regard to the decision of the arbitrator u/s 10A had been followed in this case.

6. One of the important points to be noted in this connexion is that the bar against the application of the provisions of the Arbitration Act is provided only In

the case of arbitration u/s 10A, Section 10A(5) says:

Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section.

It would, therefore, follow that the bar against the application of the Arbitration Act, 1940, will not apply to the decision of the arbitrator In the present case.

7. There is next Section 18(3) of the Industrial Disputes Act, which nays that the settlement arrived at in the course of conciliation proceedings under the Act or an award of labour court, tribunal or national tribunal, which has become enforceable, shall be binding on all the parties to the industrial dispute. Hence the settlement u/s 12(3) was only for the purpose of relegating the dispute for decision to an arbitrator. In other words, the settlement only recorded an agreement to refer to arbitration. As long as the parties have acted upon that agreement and referred the matter to an arbitrator for decision, it must be held that the parties have acted upon the settlement and have complied with the statutory requirement stated in Section 12(3). But the binding character of the Settlement for the purpose of Section 12(3) of the Industrial Disputes Act, cannot be extended further to imply that the award made in pursuance of that settlement will be binding or that such award cannot be impugned on any of the grounds which could be urged by the parties to the reference to arbitration under the provisions of the Arbitration Act. From this point of view a distinction has to be made between the provision in Section 18(2) of the Industrial Disputes Act which says that

an arbitration award which has become enforceable shall be binding on the parties,

and Section 18(3) which says that,

a settlement arrived at in the course of conciliation proceedings under the Act shall be binding on all the parties.

Therefore, what is material in the present case is to note that the binding nature of the settlement is limited to the agreement of reference to the arbitrator, but the farther question whether the decision of the arbitrator on such reference has got a final and binding character on the parties must be viewed only in the context of the decision of the pending proceedings In the civil Court under the Arbitration Act. This cannot be gone into in this writ proceeding merely on the basis of a finding about the conclusive nature of the settlement u/s 12(3). The conclusive nature of the settlement cannot be extended to the decision of the arbitrator itself. The writ petition is, therefore, dismissed with the above observation. It will be open to the parties to put forward the contentions open to them for and against the decision of the arbitrator in the petition pending before the City Civil court.

8. No order as to costs.