
(1960) 02 AP CK 0015
In the Andhra Pradesh High Court

Deccan Tile Works	Vs	APPELLANT
Their workmen (Tile Factories Workers" Union) and Others		RESPONDENT

Date of Decision : 16-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 19, 2, 25F, 25FF

Citation : (1960) 2 LLJ 298

Hon'ble Judges : Seshachalapathi, J

Bench : Single Bench

Judgement

Seshachalapathi, J.—This is a petition under Article 226 of the Constitution of India to quash the award of the labour court, Andhra Pradesh, Guntur, in Industrial Dispute No. 21 of 1958. The petitioner is the management of the Deccan Tile Works, Samalkot, East Godavari, and the respondent 1 is the Secretary of the Samalkot Tile Factories Workers" Union representing the workmen of the petitioner's tile factory. Between the owners of the tiles factories and the workmen in Samalkot, there was a general agreement of wages as embodied in Ex. A. 1, dated 5 June 1957. That settlement, was made under the terms of Section 12, Sub-section (3), of the Industrial Disputes Act.

2. On 3 June 1957 the petitioner addressed a letter to the Chief Inspector, Factories and Boilers, notifying his intention to close down the factory for one month from 17 June 1957, for effecting certain repairs and making some structural alterations. The factory Was closed but did not reopen within a month as contemplated. On 13 July 1957, the petitioner again wrote to the Chief Inspector, Factories, intimating to him that as the construction work was not completed, the factory would remain closed till 17 September 1957. Further letters also appear to have been written by the petitioner to the same effect and it is not in dispute that actually the factory was reopened only on 20 January 1958.

3. In the meantime, the petitioner notified to the workmen on 4 November 1957

that wages agreed to be paid under Ex. A. 1 would not be paid to them and they could continue to serve in the petitioner's factory if they were agreeable to receive lower wages. On 5 November 1957, the workmen raised the present dispute and the labour conciliation officer's efforts at composing the differences between the management and the workmen having proved abortive, by a reference u/s 10(1)(c) dated 31 July 1958, the Government of Andhra Pradesh referred the Industrial dispute to be adjudicated by the labour court. In the annex are to the Government order the question referred for adjudication was:

Whether the refusal of the employers of Deccan Tile Works, Samalkot, to take back into service the following workmen on the previous terms and conditions of service, when the factory reopened on 20 January 1958 is justified:

The names of 21 workmen were given therein.

4. The labour court, having registered the dispute and on a consideration of the respective cases put forward by the management and the workmen and after a survey of all the evidence, oral and documentary, held that the refusal of the management to take back into service the 21 workmen named in the reference on the terms and conditions of service embodied in Ex. A. 1 on 20 January 1958 when the factory reopened was unjustified and that the workmen were entitled to reinstatement and the payment of back-wages from 20 January 1958 at the rates as settled in Ex. A. 1.

5. It is this award that is challenged in this writ petition. Mr. Krishnamurthi, learned Counsel for the petitioner, has raised before me, in the main three principal contentions:

(1) that the labour court has no jurisdiction to investigate into and adjudicate upon the present dispute, as it is not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act (Act XIV of 1947);

(2) that the management was within its rights in terminating Ex. A. 1; and

(3) that even if the workmen were entitled to the reliefs, which have now been given to them, the labour court should not have ordered the reinstatement of persons who have not come into service at all and should not have awarded back-wages for workmen who have already been taken into service.

6. As regards the first contention, I am of opinion that there is absolutely no substance. That the 21 workmen, who figure in this dispute, have been the workmen of the petitioner's factory prior to its closure on 17 June 1957 can admit of no doubt. If their services are sought to be terminated, it could only be in accordance with Section 25F or 25FF of the Act. That has been done in this case. Mr. Krishnamurthi's contention is that there is no privity between the management and the workmen, because the management have given the entire contract of labour to one Chitti Appa Bao, who was himself a workman. The agreement is stated to have been made on 20 January 1958. That agreement was not produced before the labour court and on the facts revealed in the

evidence, the labour court was of opinion that the so-called agreement was not bona fide even on the assumption that it was true in fact; and I cannot say that that inference is either unwarranted or not sustained by the record. In any event, the agreement between Appa Rao and the management having been concluded only on 20 January 1958 long after the present dispute has been referred to the conciliation officer on 5 November 1957, there is no substance in the contention that the workmen are not the workmen of the petitioner's factory but should be deemed to be the workmen of Chitti Appa Rao. I hold, therefore, that the finding of the labour court that the 21 workmen are the workmen of the petitioner, is fully justified and it is not liable to be assailed in the manner in which it has been done in this petition.

7. The next contention of Mr. Krishnamurthi is that the management was within its rights in repudiating and putting an end to the agreement, Ex. A. 1, u/s 19 of the Industrial Disputes Act. As pointed out by the learned Counsel for respondent Mr. A. Gangadhar Rao, what the section says is that the agreement should be in force for six months and it is only after the expiry of six months that the question of two months' period would arise. The agreement in this case, Ex. A. 1, was made on 5 June 1957. That being so, it would be in force for six months from that date till 4 December 1957. The notice terminating this agreement was given on 17 November 1957. Obviously the management was not within its rights in terminating and unilaterally repudiating Ex. A. 1. On this part of the case there is nothing to call for the modification of the view taken by the labour court.

8. It has been held by the Federal Court and the Supreme Court of India that in appropriate cases the labour court and the tribunal, as the case may be, might order reinstatement with back-wages.

9. Of the 21 workmen, it is stated by the learned Counsel for respondent, that three workmen, P. Subba Rao, Karri PaBuvula Rao and Gangu Appala Narasamma, have sought employment elsewhere and are not claiming the benefits of this award. Therefore, the question arises only with respect to the remaining eighteen. As to those eighteen workmen it is admitted by both sides that seven workmen

- (1) Medisetti Apparao,
- (2) Chittiprolu Chitteyya,
- (3) PithaniRaghavulu,
- (4) Kilimbi Marasimhamurthy,
- (5) Edla Simhachalam,
- (6) Shipuri Nukalamraa, and
- (7) Nalam Simhachalam.

have been taken into service three or four months after 20 January 1958 when

the factory had reopened. They will be entitled to the back-wages from 20 January 1958 till the actual date when they were absorbed into service and to be paid the wages at the rates prescribed in Ex. A. 1. They certainly are entitled to the difference between the agreed rates as per Ex. A. 1 and actual amounts paid to them since the date of their reemployment. With respect to eleven others, they are certainly entitled to reinstatement and also entitled to back-wages from 20 January 1958 till the date of reinstatement at the rates fixed in Ex. A. 1. If any of them have joined service subsequent to the filing of this writ petition, they will also be likewise entitled to the difference between the agreed rates as per Ex. A. 1 and the actual wages being paid to them.

10. These modifications will be carried out in the operative portion of the order of the labour court. Subject to these directions, the writ petition fails and is dismissed with costs of the first respondent. Advocate's fee Rs. 100.