
(1979) 08 KL CK 0009
In the High Court Of Kerala

Dhanalakshmi Bank Ltd.

APPELLANT

Vs

Parameswara Menon

RESPONDENT

Date of Decision : 09-08-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33A

Citation : (1980) 1 ILR (Ker) 565 : (1980) 2 LLJ 45

Hon'ble Judges : Narendran, J; Balakrishna Eradi, J

Bench : Division Bench

Judgement

Balakrishna Eradi, J.—The 2nd respondent in O.P. No. 3157 of 1974 is the appellant in this appeal. That was a writ petition filed by the General Secretary, Dhanalakshmi Bank Employees' Union, Trichur - 1st respondent in this appeal - seeking to quash the order Ext. P4 passed by the Industrial Tribunal, Calicut, dismissing C.M.P, No. 41 of 1974 filed by him praying for an interim order restraining the appellant herein - The Dhanalakshmi Bank Ltd. - from taking any farther proceedings pursuant to a circular issued by the Bank on 23rd May, 1974 and a newspaper advertisement published by the Bank on 30-5-1974 announcing its decision to conduct a test for promotion of personnel from the clerical cadre to the category of junior officers and for direct recruitment to the cadre of executive trainees. That petition was filed in I.D. No. 61 of 1974 instituted by the first respondent herein u/s 33A of the Industrial Disputes Act, 1947, hereinafter called the Act. The complaint raised in that petition was that during the pendency of an industrial dispute in which one of the questions referred related to the promotion policy of the Bank, the Bank had contravened the provisions of Section 33 of the Act by altering to the prejudice of the workmen the conditions of service applicable to them. The Industrial Tribunal by its order Ext. P4 held that there was no provision of law under which it possessed the power to restrain the management from proceeding further in pursuance of the circular and advertisement referred to in the application for interim relief. On this ground the Tribunal dismissed C.M.P. No. 41 of 1974. The learned single Judge allowed the petition by a very brief judgment which reads as under:

In view of the decision of the Supreme Court in *Income Tax Officer Vs. M.K. Mohammed Kunhi*, - it is impossible to sustain the view of the Industrial Tribunal in Ext. P4 order that it has no jurisdiction to entertain an application for stay pending disposal of a complaint u/s 33A of the Industrial Disputes Act. I, therefore, allow this O.P. and set aside Ext. P4 order. As far as the prayer for stay of Ext. P2 circular is concerned, I direct the Tribunal to deal with the matter afresh in accordance with law and in the light of the observations contained in this judgment and pass appropriate orders on the application for stay.

2. It is contended before us by the learned Counsel for the appellant that the view taken by the learned single Judge that the Industrial Tribunal was vested with jurisdiction to grant the interim relief prayed for in C.M.P. No. 41 of 1974 is erroneous in law and that the decision in (1969) *Income Tax Officer Vs. M.K. Mohammed Kunhi*, , relied on by the learned single Judge does not support the said view. After hearing counsel on both sides we have come to the conclusion that the aforesaid contention of the appellant has to be upheld and that this writ appeal has to be allowed. The jurisdiction u/s 33A will get attracted only when it is shown that an employer has contravened the provisions of Section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal. The purpose underlying the conferment of the said jurisdiction on the Tribunal has been explained by the Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, (para 31):

This section was inserted in the Act in 1950. Before it was enacted the only remedy available to the employees against the breach of Section 33 was to raise an industrial dispute in that behalf and to move the appropriate Government for its reference to the adjudication of a Tribunal u/s 10 of the Act, The trade union movement in the country complained that the remedy of asking for a reference u/s 10 involved delay and left the redress of the grievance of the employees entirely in the discretion of the appropriate Government; because even in cases of contravention of Section 33 the appropriate Government was not bound to refer the dispute u/s 10. That is why Section 33A was enacted for making a special provision for adjudication as to whether Section 33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the Tribunal and it adds that on receipt of such complaint the Tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the Tribunal to submit its award to the appropriate Government and the provisions of the Act shall then apply to the said award. It would thus be noticed that by this section an employee aggrieved by a wrongful order of dismissal passed against him in contravention of Section 33 is given a right to move the Tribunal in redress of his grievance without having to take recourse to Section 10 of the Act.

The question whether in a proceeding initiated u/s 33A the Industrial Tribunal can grant the relief of interim reinstatement came up for examination before the

Supreme Court in Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another, . In the judgment in that case the Supreme Court explained the legal position thus (paragraph 7):

It is clear that in case of a complaint u/s 33A based on dismissal against the provisions of Section 33, the final order which the Tribunal can pass in case it is in favour of the workman, would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the Tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the Tribunal to justify the dismissal: See The Punjab National Bank Ltd. Vs. Its Workmen, , where it was held that in an inquiry u/s 33A, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the Tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered u/s 33A. Therefore, when a Tribunal is considering a complaint u/s 33A and it has finally to decide whether an employee should be reinstated or not, it is not open to the Tribunal to order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal. The interim relief ordered in this case was that the workman should be permitted to work: in other words he was ordered to be reinstated; in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings u/s 33A As was pointed out in The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order, therefore, of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must, therefore, be set aside. We therefore, allow the appeal, set aside the order of the High Court as well as of the Tribunal dated May 16, 1957, granting interim relief.

In the present case what the Tribunal was invited by the writ petitioner to grant was an order virtually granting the very relief that had been sought for in the complaint filed u/s 33A, namely, to prevent the Bank from proceeding to make appointments to the cadre of junior officers by promotion and by direct recruitment. Section 33A does not, in our opinion, contemplate the grant of such anticipatory relief for prevention of any apprehended contravention of Section 33. If and when it is established before the Tribunal that there has been, in fact, a contravention of Section 33 by the employer, the Tribunal will, in such event, pass appropriate orders granting effective relief to the workmen so as to

obliterate the consequences that may have resulted from the act of the management performed in contravention of Section 33. It is only to this extent that the jurisdiction of Section 33A stretches. The grant of an interim relief in the nature of injunction is not within the competence of the Tribunal since no such power has been conferred on it by any of the provisions of the Act. The decision in *Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* A.I.R 1969 S.C. 430, relied on by the learned single Judge only lays down that where a power of appeal is conferred on an authority it carries with it by necessary implication the authority to use all reasonable means the exercise of such appellate power effective such as to grant by stay of any proceeding by one party during the pendency of the appeal which would have the effect of rendering the appeal infructuous or ineffective. This principle can have no application to a case like the present one where a special original jurisdiction has been conferred by a statute on the Industrial Tribunal. The scope and ambit of such jurisdiction are to be gathered only from the provisions of the enactment to which the Tribunal owes its very creation.

3. In the light of what is stated above it is clear that the learned single Judge was not justified in interfering with the order Ext. P4 passed by the Tribunal. The Tribunal had taken a correct view regarding the scope and extent of its powers while functioning u/s 33A of the Act. The writ appeal is accordingly allowed; the judgment of the learned single Judge is set aside and O.P. No. 3157 of 1974 is dismissed. The parties will bear their respective costs.