
(2007) 04 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 13173 of 2006

Director, Government Central Press

APPELLANT

Vs

President, Indian Employees" Union

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2 (j)

Citation : (2007) 115 FLR 992 : (2008) 1 LLJ 420

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Jagadeesh Mundargi, AGA, for the Appellant; N.G. Phadke and Meerabai, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This writ petition is directed against the award dated June 14, 2006 in I.D. No. 63/2005 on the file of Industrial Tribunal, Bangalore. The respondent-Union sought for reference of a dispute to the Industrial Tribunal and the Government, by order dated December 21, 1995 referred the dispute to the Industrial Tribunal.

2. The case of the respondent is that, in the establishment of the petitioner, there are about more than 2,500 employees, some employees are ministerial employees and some are industrial employees. Both the categories of employees are discharging similar, identical work in their respective cadre. Majority of the, ministerial employees of the petitioner establishment are members of the respondent-Union. Respondent is a registered Union. They made a demand for certain benefits by a representation dated January 30, 1987 and continued their agitation by making several representations, i.e., demanding equal wage, equal treatment for the persons who are placed in the same posts and same work. The said demands having been refused, they moved the, reference. Petitioners filed objections contending that the Tribunal has no jurisdiction in view of the provisions of Administrative Tribunals Act, 1985 and also, as per the provisions of

the Factories Act, 1948, the, employees drawing salary more than Rs. 5,000/- and above, are outside the purview of ESI, P.F., etc. The industrial legislations are not applicable to the alleged claim of the respondent-Union. A specific contention was, raised, inter alia stating that there is no* provision for grant or extend the benefit of the demands to the members of the Union and further, the demand is also hit by the Articles 14, 16 and 39 of the Constitution of India and there is no financial surplus to meet the demands.

3. Before the Industrial Tribunal, on behalf of the respondent-Union, one A.G. Sathyanarayana was examined as W.W. 1 and" Exhibit W-1 to Exhibit W-44 were marked. On behalf of the petitioner establishment one D. Renukacharya, Joint Director was examined as M.W. 1 and documents Exhibit M-1 to Exhibit M-3 were marked.

The Industrial Tribunal on the question of jurisdiction held that, the dispute referred to the Industrial Tribunal is maintainable and the Industrial Tribunal has the jurisdiction, by relying on the judgment in 1996 I LLJ 168 and also relying on the order passed in W.P. No. 16432/1987 and Writ Appeal No. 2556/1987 and further held that, the petitioner is an "industry" and the members of the respondent-Union are the workmen and the dispute is an industrial dispute. It also held that the Industrial Tribunal's jurisdiction is not ousted by virtue of the provisions of Administrative Tribunals Act.

The Industrial Tribunal also held that the workmen i.e., the members of the respondent-Union are entitled for the benefit, by considering the fact that, similarly placed employees have been given the said benefit and the said fact is admitted by the petitioner establishment.

4. Sri Manohar, learned Government Advocate, appearing for the petitioner establishment, mainly submitted that, the petitioner is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. He further submitted that, the members of the respondent-Union, being the Government Civil Servants, cannot raise a dispute under the provisions of Industrial Disputes Act and the question relating to service benefit is required to be adjudicated by the Administrative Tribunal, under the provisions of the Administrative Tribunals Act. He further submitted that, the respondent-Union is not a recognised Union and cannot raise a dispute. He also submitted that the Rules governing the services of members of the respondent-Union, do not provide for payment of the said benefit and in the petitioner establishment, the ministerial staff is governed by the Karnataka Civil Services Rules, 1958 and the industrial staff is governed by the provisions of Labour Law. They are two distinct departments and are governed by respective laws. The members of the respondent-Union, being ministerial staff are not entitled for the claim and they also cannot maintain the dispute. In this regard, he further submitted that, the Manual relating to Government Press, provides for separate provisions for the industrial staff and the ministerial staff and further submitted that, as far as the industrial staff is concerned, they are paid the allowances and other benefits because of the nature

of job they are discharging. As far as the members of the respondent-Union are concerned, they being ministerial staff, their service conditions are governed by the Karnataka Civil Services Rules and they are paid in accordance with the Rules. He further submitted that when the Rules do not provide for granting such allowance to these members, the question of paying the said allowance does not arise. He relied on a judgment of the Apex Court in *Mahanagar Telephone Nigam Ltd. and Others Vs. Umesh Korga Bhandari and Others*, and submitted that the question as to whether the person holding civil post can seek relief under the Industrial Disputes Act, is a matter which has been referred to the larger Bench and the issue is still pending. He further submitted that, when specific legislation has been made providing for adjudication of the dispute of the Government servants under the Administrative Tribunals Act, the Industrial Disputes Act is not maintainable and the jurisdiction of the Industrial Tribunal is ousted.

5. Sri Phadake, learned Counsel appearing for the respondent-Union submitted that the Industrial Tribunal has the jurisdiction to entertain the dispute. He further submitted that, the petitioner is an industry within the meaning of Section 2(j) of the Industrial Disputes Act and this matter has been set at rest by the decision of the Five Judges Bench in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, wherein the Apex Court has held that, the predominant nature of the services and the integrated nature of the department will be the true test. The whole undertaking of such integrated department will, be an industry, although those who are not workmen by definition may not benefit by the status. He also submitted that, in this case the Petitioner establishment being an industry engaged in printing work and connected with, the said industry, it cannot be segregated or separated, that, it cannot be treated as not part of the industry or part of the same is not an industry. He further submitted that even in the case of *General Manager, Telecom Vs. A. Srinivasa Rao and Others*, the decision of the three Judges Bench in Telecom Department, the Apex Court relying on the Bangalore Water Supply Board's (supra) decision, has held that if the entire department is an industry, all the persons working in the said industry are workmen and the dispute is amenable to the jurisdiction of the Industrial Tribunal.

He further submitted that, in this case, even the said question will not fall for consideration, as this Court in W.P. No. 16432/1987, decided on November 9, 1987 in the matter of the Government Press by relying on the Bangalore Water Supply's (supra) decision, has held that, the Petitioner establishment is an industry and the said decision is confirmed by the Division Bench in Writ Appeal No. 2556/1987.

He further submitted that, these two decisions are marked in the evidence of the workman as Exhibit W-39. He further submitted that, if the Petitioner establishment has been held as an industry by this Court, it is now not open to the petitioner to raise the said question once again in this writ petition.

In addition to this, he also pointed out that in this case, the respondent-Union

had filed an application before the Karnataka Administrative Tribunal inter alia seeking for the same relief by invoking the provisions of Section 19 of the Administrative Tribunals Act and the Government took a stand that the application is not maintainable and on account of the said stand, the application was dismissed as withdrawn and thereafter the respondent has raised a dispute before the Assistant Labour Commissioner and the Assistant Labour Commissioner refused to refer the dispute, against which, another application was filed in Application No. 2836/1995, which is marked as Exhibit W-43 in the said application, the para wise remarks submitted by the Director, it is alleged that, the application is not maintainable and the only remedy that is available is before the Industrial Tribunal or the Labour Court and in the light of such a stand taken by the Director, Administrative Tribunal quashed the endorsement issued by the Assistant Labour Commissioner was quashed and the Assistant Labour Commissioner was directed to consider the matter for reference to the Industrial Tribunal or the Labour Court. Relying on these documents, learned Counsel for the respondent submitted that, it is not a case, where the respondent has directly approached the Assistant Labour Commissioner for referring the dispute, it is only after exhausting the remedy under the provisions of the Administrative Tribunal and in the light of the order made by the Administrative Tribunal in Application No. 2836/1995, the dispute was referred by the State Government. He also submitted that, the State Government itself has referred the dispute to the Industrial Tribunal and now it cannot raise a contention that the Industrial Tribunal has no jurisdiction.

6. As regards the Rule not providing for grant of such allowance, learned Counsel for the respondent submitted that, even assuming that the Rules do not provide for grant of such allowances to the members of the, respondent-Union, at the same time Rules also does not prohibit for payment of such allowances and further if the identical work is done by the members of the respondent-Union and for the identical work, the other employees. are paid, there is no reason for the petitioner to" deny the same relief to the members of the respondent-Union. In this regard, he relied on a judgment of the Apex Court in P.C. Wadhwa Vs. State of Haryana and others, and" submitted that in the said case, the Rules did not provide for deputation allowance. The Apex Court at para 5 of the judgment has observed as under:

The mere absence of the provision for payment of deputation allowance cannot be interpreted to mean an absolute bar to the receipt of such deputation allowance by an IPS Cadre Officer, if other Rules permit such a course of action.

He submitted that in this case, there is no distinction between the members of the respondent-Union and the other employees, as the job is interchangeable from one department to another department and the job is also identical. In such circumstances, it is unreasonable for the petitioner to discriminate amongst the similarly placed employees in the matter of payment of allowances. He also submitted that, even assuming that there is no such rule under the Manual, but

the Rule also does not prohibit from granting the said relief. In this regard, he relied on the letter of the Director of the petitioner establishment dated July 18, 1987 which is marked as Exhibit W-18, wherein the Director has stated that, the facilities for the ministerial staff as well as the industrial staff are one and the same and there is no distinction between work culture also. In the light of this, learned Counsel for the respondent submitted that the Labour Court considering the facts and circumstances of the case, has rightly passed the award.

7. In the light of the submission made by both sides the questions that arise for consideration are:

(i) As to whether the petitioner is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947?

(ii) Whether in the absence of any rules providing for similar allowance could be extended to the member of the respondent-Union?

(iii) Whether the respondent-Union can maintain a dispute?

(iv) Whether an industrial dispute is maintainable in the case of a civil servant?

8. Petitioner is an establishment, engaged in printing work on behalf of the State Government. It is not in dispute that, the Government Press Manual divided the employees into two categories namely, Industrial and Ministerial. It is also not in dispute that the employees are interchangeable. The nature of work is also identical. It is also submitted that as per the letter of the Director of the petitioner dated July 18, 1981 produced at Exhibit W-18, has admitted that the nature of work culture of both is same. In an identical circumstances this Court in W.P. No. 16432/1987 disposed of on November 9, 1987 by relying on the judgment of the Apex Court in the case of Bangalore Water Supply (supra) has held that petitioner is an industry. Further, the said order has been confirmed by the Division Bench of this Court in Writ Appeal No. 2556/1987. It is not disputed that, the order of this Court is not further challenged and it has become final. If that is so, by virtue of the order passed by this Court, petitioner deemed to be an industry within the meaning of Section 2(j) of the Act. Apart from this the nature of work as 1 admitted by the Director of the petitioner, that the facilities and benefits are extended to the ministerial staff and technical staff of the printing Section and it is admitted by the witness on behalf of the employer that the] employees of ministerial department and industrial staff are interchangeable and if that is so by the nature of work it cannot be said that part of the establishment is not an industry, inasmuch as the complex of activities some of 2 which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" of some departments are not productive of goods and services if isolate, even then, the predominant: nature of the services and the integrated nature of the departments will be the true test. The whole of the department has to be treated to be an industry and cannot be segregated by two parts. In this case, it is not in dispute that some; of the workmen working in the petitioner establishment are performing identical

nature of work on par with those working in industrial Section. If that is so, the whole of petitioner establishment has to be treated as industry and: not part.

9. The question as to whether civil servant can raise industrial dispute or only remedy that is available for him is to move an, application under the provisions of Administrative Tribunals Act is concern, in this case the respondent-Union had raised a dispute before the Assistant Labour Commissioner and the Assistant Labour Commissioner refused to refer the dispute against which an application was filed before the Karnataka Appellate Tribunal and the Tribunal passed orders inter alia quashing the order of the Assistant Labour Commissioner and directed the Assistant Labour Commissioner to consider the case or the respondent for referring the dispute to the Industrial Tribunal. It is not in dispute that the State Government referred the dispute to the Industrial Tribunal. Apart from this Section 28 of the Administrative Tribunals Act, 1985, which reads as under:

28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution.- On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no Court except.-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment of such service matters.

Reading of Section 28 of the Act makes it clear that except the Supreme Court, any Industrial Tribunal, Labour Court or other Authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force no Court has jurisdiction to entertain the dispute.

10. Sri Manohar, learned Government advocate relying on judgment in the matter of Umesh Korga Bhandari (supra), the Apex Court in similar circumstances found that, the question as to whether a person holding a civil post can seek relief under the provisions of the Act is required to be decided by a larger Bench. In the said judgment two Judges of the Division Bench has referred the matter to the larger Bench and observed that, the said question is required to be decided by a larger Bench. Since the issue as to whether the Industrial Tribunal has jurisdiction or not, is yet to be decided by the Apex Court and the matter is still pending. However, in this case the Karnataka Appellate Tribunal itself has held that the dispute is required to be referred to the Industrial Tribunal by its order dated October 10, 1995, which reads as under:

The rejection of the request of the applicant for reference u/s 10 of the Industrial

Disputes Act is based on an erroneous view of the law. In the circumstances, we quash the impugned endorsement and direct the State Government to consider the request of the applicant and pass an appropriate order within two months from the date of receipt of this order.

11. In the light of the order passed by the Administrative Tribunal, and in the light of the State Government having referred the dispute to the Industrial Tribunal, further in the light of the order passed by this Court in the writ appeal referred to above that the petitioner being an industry, since the said question is not yet decided, I need not go into the said question as to whether civil servants can seek relief under the I.D. Act or not, as the matter is still pending before the Apex Court. However, for the purpose of this case, in the circumstances stated above and in view of the earlier order passed by this Court holding that the petitioner establishment is an industry, I am of the opinion that, the Tribunal has rightly invoked its jurisdiction and passed order.

12. Insofar as the rules providing for grant of allowance is concerned, no doubt it is submitted by the learned Government advocate that the rules only provided for grant of such allowance to the industrial employees and the ministerial employees. However, he was not able to point out from any of the rules that there" is any bar for granting such relief to the employees in the ministerial Section as it is held that, the entire establishment is an industry and having found that the employees are interchangeable and also having found the nature of work of the industrial Section and ministerial Section is identical, in the absence of rules, benefit cannot be denied to the employees who are also attached to the industry. To this extent the Apex Court in the matter of P. C. Wadhwa (supra), observed thus:

The mere absence of the provision for payment of deputation allowance cannot be interpreted to mean an absolute bar to the receipt of such deputation allowance by an IPS Cadre Officer, if other rules permit such a course of action.

13. In this case, it is not in dispute that other similarly placed employees are being given the benefits. In such circumstances even if the rules do not provide for, the ministerial staff cannot be denied of the same. The other contentions raised by the learned Government advocate that, the respondent is not a recognised union is concerned, it is not disputed that the respondent has produced register showing that they are represented by the Union and it has large number of members and number of documents are produced before the Industrial Tribunal and the Tribunal based on the said documents has found that the respondent is a trade union and it is also pointed out by the learned Counsel for the respondent that, the respondent is only the registered trade union and others, is only an association and not a registered trade union. If that is so, I do not find any merit in the contentions raised by the learned Government Advocate.

14. In the above circumstances, I do not find any merit in the contentions of the learned Government advocate. Hence the award of the Industrial Tribunal does

not call for interference. Accordingly, writ petition fails and the same is dismissed.