

(1995) 07 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 1059 of 1995

Hindustan Aeronautics Ltd.

APPELLANT

Vs

S. Alfred Slim

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 10 (4A), 33 (2) (b)

Citation : (1995) ILR (Kar) 2656 : (1995) 4 KarLJ 561 : (1996) 1 LLJ 1187

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Judgement

Mohan Kumar, J.—The short question that arises for consideration in this Writ Petition is whether the application filed by the worker-1st respondent u/s 10(4-A) is barred by limitation. The worker was dismissed from service on 30-9-1982. An application u/s 33(2)(b) of the I.D. Act was moved by the employer-petitioner. By order dated 3-10-1985 the said application was rejected by the Industrial Tribunal. The said order was challenged by the employer by filing Writ Petition No. 2094 of 1986 which was dismissed on 28-7-1989. Against the said dismissal order Writ Appeal No. 1912 of 1989 was filed. This Court by judgment dated 9-1-1990 set aside the order of the Tribunal and also the order in W.P. No. 2094 of 1986 and remitted the matter for fresh disposal. On 13.6.1991 after fresh consideration permission was granted by the Industrial Tribunal u/s 33(2)(b) to dismiss the worker. The application u/s 10(4-A) of the I.D. Act was moved by the worker within six months thereof challenging the termination order. A preliminary objection was raised by the employer alleging that the application is belated and that it should be filed within six months from 30-9-1982 the date of the order of dismissal. The Labour Court by the order impugned herein has overruled the objection and has held that the application is not belated. It is the said order that is being challenged in this Writ Petition.

2. I have heard the learned counsel Sri Gururajan on behalf of the petitioner. According to him his application is not for permission but for approval. When an

approval is sought, it is with respect to an action already taken; the dismissal order hence has in fact come into existence. Therefore the period should be reckoned from that date of dismissal and the decision on the application u/s 33(2)(b) will not save the period of limitation. He relied on a decision of this Court reported in I.T.C. Ltd. Vs. Govt. of Karnataka and Others, in support of his argument. According to him even when an application u/s 33(2)(b) is pending a dispute can be raised u/s 10(1)(C) or u/s 10(4-A) as there is an industrial dispute. The contention is that since such a case be raised the application u/s 10(4-A) should be made within 6 months from the date of such a dispute and the period of limitation does not depend on Section 33(2)(b) application. This contention is obviously erroneous for the reasons that the dispute thought existing does not come into effect immediately on the date the dismissal is effected. Its operation is suspended temporarily in view of the requirement conforming to Section 33(2)(b). It is to be noted that if the order passed in the application u/s 33(2)(b) is against the employer then automatically the order of dismissal is not effective and the worker has to be reinstated. It means there is no industrial dispute for adjudication by the Tribunal. The learned counsel further relied on the following passage from I.T.C. Ltd. Vs. Govt. of Karnataka and Others, to show that the enquiry u/s 10 and Section 33(2)(b) of the I.D. Act is similar qua an order of termination.

"... This aspect was considered in great detail in the case of Workmen of Mysore Lamp Works v. State of Karnataka W.P. No. 17184 of 1980 Dt. 20-3-1984 and the relevant portion of the judgment reads:

"Thus it may be seen, though practically there is no difference between the scope and nature of the inquiry to be held by the Tribunal and Labour Court in a reference u/s 10 of the Act and in a proceeding u/s 33 of the Act and in a proceeding u/s 33 of the Act in a dispute relating to imposition of penalty or removal or dismissal from service against a workman, they have additional powers in respect of two matters namely -

- (i) to reappreciate evidence if domestic inquiry is valid, and
- (ii) the power to substitute the penalty of dismissal by lesser penalty even if the finding recorded is valid.

While adjudicating a reference, in view of Section II-A of the Act and they do not have them in a proceeding u/s 33 of the Act.

24. In the light of the above discussion, I am inclined to take the view, that in all cases concerning dispute relating to imposition of penalties or removal or dismissal from service of workman, with prior permission or subsequent approval through an order made by a Labour Court or Tribunal, u/s 33 of the Act that would constitute a relevant basis for not referring the points of dispute on which a finding had been recorded in the course of such an order, though it does not constitute a relevant basis for not referring the points falling u/s 11A of the Act which are not within the jurisdiction of the Labour Court or Tribunal while

functioning u/s 33 of the Act."

The above being the position, I fail to see how it can be held that the State Government is not competent to refer a dispute concerning the dismissal of a workman just because the same dispute is pending in a proceeding u/s 33(2)(b) of the Act."

This judgment relied on is in relation to a case where reference was made pending application u/s 33(2)(b). A dismissal gives rise to an industrial dispute. The worker has a choice to accept the same and proceed to agitate his right then and there or wait till the competent authority grants sanction to the employer to enforce order u/s 33(2)(b). The worker gets an opportunity to contest its validity, passing on the burden of proof of sustaining the order to the employer. The Division Bench of this Court has also observed as follows: (in 1985 K.L.J. 74) I.T.C. Ltd. v. Government of Karnataka

"Grant of approval u/s 33(2)(b) of the Act does not conclude the dispute and the parties would be free to seek reference u/s 10 of the Act. Proceedings u/s 10 of the Act, settle the dispute finally. Resolving the dispute finally and expeditiously is very desirable. Therefore an interpretation which advances this object should be preferred. On the dates when the Government made the two references much progress was not made in the proceedings u/s 33(2)(b) of the Act. Therefore, even if the pendency of the proceedings u/s 33(2)(b) of the Act was brought to the notice of the Government it could not have the effect of persuading the Government not to make the reference. Hence, we are of the opinion that these are not fit cases for interference with the impugned orders of the Government."

It is very clear from the above that proceeding u/s 10(1) of the Act will put an end to the proceedings u/s 33(2)(b) of the Act. Whatever be the interpretation the intention of the law makers in enacting Section 10 as also Section 33(2)(b) is to advance the object of settling the dispute. As can be seen, if the application u/s 33(2)(b) is rejected it will follow that the worker's dismissal order is set at naught in which case the worker need not invoke the proceedings u/s 10(1) of the Act. If as a matter of fact if the dismissal is not approved then there is no question of raising any dispute for adjudication u/s 10(1)(c) or Section 10(4-A) but only a proceeding u/s 33A of the I.D. Act can be moved.

3. Secondly, it may be noticed that in the event the approval is sought by the employer u/s 33(2)(b) the jurisdiction of the Tribunal/Labour Court extends, upto the validity of the dismissal itself. The following passage from 1961 II LLJ 644 Bharat Sugar Mills Ltd. v. Jai Singh & Ors. will make the position clear. "..... When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment, the tribunal has to satisfy itself that there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself, the tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that

enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimization or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the tribunal to take evidence of both side in respect of the alleged misconduct. When such evidence is adduced before the Tribunal, the management is deprived of the benefit of having the findings of the domestic tribunal, being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the industrial tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct." The adjudication of the dispute at the stage itself is for the settlement of the disputes. In the event of an application u/s 10(4-A) or the dispute referred u/s 10(1)(c) is also made the same object is achieved. We may notice a factual position in this case. Permission sought for dismissal was declined at first on 3-10-1985 by the Tribunal. It means there was no order of dismissal in force. Till the Writ Appeal was allowed on 9-1-1990 this was the state of affairs. The order was revived only after the Labour Court passed fresh order on 13-6-1991. It is hardly to be expected that the Legislature would have left this position in such an uncertain sphere. Hence it has to be held that only when the dismissal order becomes operative that the period of limitations begins to run. 4. The learned counsel for the petitioner stress the wording of Section 10(4-A) of the I.D. Act. According to him as per the wordings of the Section the period of limitation commences from the date of communication of the order of dismissal. I have examined similar contention and rejected the same in W.P. No. 30501 of 1994 DD 6-6-1995 S.S. Rathore Vs. State of Madhya Pradesh, S.S. Rathore v. State of Madhya Pradesh. The following passage from the said decision was relied on the reject similar arguments: "We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months" period from the date of preferring the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representation not provided by law are not governed by this principle. 21. It is appropriate to notice the provision regarding limitation u/s 21 of the

Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be inviolable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continued to be governed by Article 58. 22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal of representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation." It was therefore held that the period of limitation runs from the date on which the order of dismissal becomes effective. It may be also noticed this is the view taken by the Supreme Court in *Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, as also 1984 (2) K.L.J. 252 *The Municipal Corporation of Greater Bombay v. The BEST Workers Union* 5. It is clear from the statute itself that the order of dismissal comes into effect as and when the approval is granted by the Labour Court. He is in the same position while defending the application u/s 33(2)(b) as if he is prosecuting an appeal. If one can state that the period of limitation commences from the date when the appeal is finally decided then one fail to see how the said principle can have no application at all while construing the effect of Section 33(2)(b) on an order of dismissal. If the application u/s 33(2)(b) is dismissed there is no industrial dispute that the worker can raise. He becomes aggrieved and an industrial dispute comes into being only when the Labour Court approves the dismissal. It means the challenge relating to the dismissal order is necessitated only when the approval is granted. Therefore the period of limitation can be held to commence only when the labour Court grants approval for the dismissal of the worker. 6. Sri Narasimhan, learned Counsel, appearing for the worker further contended that the period of limitation stipulated u/s 10(4-A) is directory and not mandatory and therefore the right to move u/s 10(4-A) is not extinguished by lapse of 6 months. He places reliance on a decision of the Supreme Court in *Municipal Corporation of Greater Bombay Vs. The B.R.S.T. Workers Union*, He also contended that such restriction of right for invoking the jurisdiction of the Labour Court by curtailing the right would be hit by the right of Article 14 of the Constitution and hence arbitrary. In the light of the view taken by me that the period of limitation commences from the date on which approval was granted, I need not express any opinion on this contention, and this aspect is left open. Accordingly the Writ Petition is dismissed. I direct that the Labour Court shall expedite the Reference and dispose of the same within six months hereof as far as possible.