

(1998) 11 MAD CK 0148
In the Madras High Court

John and Mani Agencies

APPELLANT

Vs

The Third Additional Labour Court and Another

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Citation : (1999) 1 MLJ 217

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—The petitioner-Management has approached this Court to issue a writ of prohibition forbearing the first respondent to proceed with the petition filed by the second respondent-workman u/s 2(A)(2) of the Industrial Disputes Act, 1947 in I.D. No. 34 of 1991 on the file of first respondent on various grounds.

2. The case of the petitioner is briefly stated here-under: The second respondent herein seeks to claim reinstatement with the petitioner company on the allegation that he was denied employment about 5 years back when he reported for duty during September, 1985, by an application u/s 2(A) of the Industrial Disputes Act, (hereinafter referred to as "the Act") in his petition dated 5.9.1990 before the conciliation officer, by way of an Industrial Dispute, after a lapse of 5 years from alleged date of non-employment. By order dated 10.12.1990, the Conciliation officer has sent a failure report and consequently, the second respondent has filed I.D. No. 34 of 1991 u/s 2(A)(2) of the Act. It is stated that though the Act did not prescribe any limitation within which any claim for Industrial Dispute of relief should be preferred, the implied limitation would always apply. It is further stated that the Tamil Nadu Government has introduced an amendment to Section 2(A) of the Act with effect from 1.11.1988, wherein without a reference intervened u/s 10(1) of the Act, application u/s 2(A)(2) can be preferred before Labour Court as if the same is deemed to refer u/s 10(1) In the instant case, since the Legislature did not provide any limitation, the second respondent has preferred a claim after a lapse of five years, the claim of the

respondent notwithstanding any other ground is vitiated by delay, laches, acquiescence on his part. The petitioner states that he cannot raise the question of limitation either before the conciliation officer or before the Labour Court as the conciliation officer's jurisdiction is limited. Notwithstanding the above grounds, the petitioner also states that the amendment Act applies prospectively and it will not go back to the alleged date of non-employment which was during September, 1985. In such circumstances, having no other effective alternative remedy, the petitioner approached this Court by way of the present writ of prohibition.

3. In the light of the above factual position, I have heard Mr. K.M. Vijayan, learned senior counsel for the petitioner and Mr. K.M. Ramesh, learned Counsel for the 2nd respondent-workman.

4. Mr. K.M. Vijayan learned senior counsel for the petitioner, contended that inasmuch as the non-employment was in the year 1985 and Section 2-A(2) of the Act having been introduced by the Tamil Nadu Government in 1988, the claim made by the second respondent before the first respondent Labour Court cannot be sustained. He also submitted that since the said provision, namely, Section 2-A(2) of the Act is prospective in its operation, it is not open to the second respondent to approach the Labour Court without proper reference by the Government. In support of the said contention, he relied on a decision reported in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . On the other hand, Mr. K.M. Ramesh learned Counsel for the second respondent, after taking me through the Tamil Nadu Amendment introducing Sub-section (2) of Section 2-A of the Act, has contended that in the absence of any limitation, the 2nd respondent is competent to approach the first respondent to ventilate his grievance; accordingly the first respondent is competent to dispose of the said claim. He also submitted that inasmuch as on the date of filing of the writ petition, there was no Industrial Dispute pending before the first respondent, the present writ petition itself is not maintainable and hence, the same is liable to be dismissed. He further submitted that even otherwise by change of procedure, the petitioner management cannot be said to be aggrieved; accordingly the writ petition is liable to be dismissed even on merits.

5. I have carefully considered the rival submissions.

6. There is no dispute that the second respondent-workman, who was employed in and around 1980 was terminated from service in the month of September, 1985, by the petitioner management. According to the workman, because of his illness, namely, Jaundice etc., he could not attend the petitioner-management and when he approached in the year 1985, he was not allowed to work. Thereafter, in view of the attitude of the petitioner-management in not conceding his request, he made an application before the Labour Officer on 5.10.1990 for conciliation u/s 2-A of the Act. After negotiation, in view of the failure on the part of both parties to settle the issue, the Labour Officer, by his order dated

10.12.1990, informed both the parties regarding failure of conciliation. A perusal of the said report (page 3 of the typed-set) shows that because the petitioner-management did not file any reply for the claim made by the workman, the conciliation officer after holding so informed the parties regarding the failure of conciliation. In such circumstance, the petitioner had approached the first respondent Labour Court u/s 2-A (2) of the Act. The said Dispute has been taken as I.D. No. 34 of 1991 by the first respondent. At that stage, the petitioner management has preferred the present writ petition and obtained interim stay of all further proceedings on 25.7.1991. In the very same application by subsequent order dated 22.2.1993, this Court after referring to the ex parte award passed on 25.7.1991, made the interim stay absolute. It is true that the non-employment in this case took place in September, 1985. The second respondent-workman approached the Labour Officer for conciliation only on 5.10.1990. Even though the said application was filed after nearly 5 years, no such objection was raised by the petitioner-management with regard to the delay or laches before the conciliation officer. As a matter of fact, even though they did not file reply statement, the records show that on R. Swaminathan, Sales Executive, has participated on behalf of the petitioner-management before the conciliation officer on various dates, namely, 22.10.1990, 5.11.1990, 14.11.1990, 16.11.1990, 21.11.1990, 26.11.1990 as well as 28.11.1990 and 7.12.1990. Since the offer of the workman was not accepted by the management, the conciliation officer having no other way informed the failure of the conciliation. In the light of the said factual position, now I shall consider whether the contention of the learned senior counsel for the petitioner is acceptable.

7. Even though in the affidavit filed in support of the said writ petition, there is a reference with regard to introduction of Sub-section (2) of Section 2-A of the Industrial Disputes Act, 1947 by Tamil Nadu Act 5 of 1988, admittedly the petitioner has not challenged the said provision. The only prayer in the writ petition is to issue writ of prohibition, prohibiting the first respondent-Labour Court from proceeding with I.D. No. 34 of 1991 only on the ground of delay or laches or inaction on the part of the 2nd respondent-workman. On a careful perusal of the Industrial Disputes Act, 1947 as well as the amendment Act (Tamil Nadu Act 5 of 1988), as rightly contended by the learned Counsel for the 2nd respondent, no limitation is prescribed anywhere in the Act for approaching the appropriate Labour Court to ventilate the grievance of the workman. Mr. K.M. Vijayan, learned senior counsel by referring to a decision of the Apex Court reported in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, has contended that in the absence of any specific reference in the Amendment Act, the said provision, namely Section 2-A(2) is prospective in its operation i.e., it applies only to disputes referred for adjudication on or after the date of its coming into force. Sub-section (2) was inserted by Tamil Nadu Act 5 of 1988. In order to appreciate the said contention, it is better to refer the very same sub-section as follows:

Section 2-A(2): Where no settlement is arrived at in the course of any conciliation proceeding taken under this Act in regard to an industrial disputes referred to in Sub-section (1), the aggrieved individual workman may apply in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication.

A plain reading of the abovesaid sub-section makes it clear that if no settlement is arrived at in the conciliation proceedings in this Act with reference to the matter provided in Sub-section (1) of Section 2-A, it is open to the aggrieved individual-workman to approach the Labour Court in the prescribed manner for adjudication of such dispute. If any such dispute is made, a duty is cast" on the Labour Court to proceed to adjudicate and pass an award as if such dispute has been referred to it for adjudication and all the provisions of the Act (relating to adjudication of industrial disputes are applicable. Even though the non-employment took place in September, 1985, it is seen from the records that because of the illness and inaction between the 2nd respondent-workman and the petitioner-management he could not approach the Labour Court immediately. I have already observed the participation of the representative of the management before the conciliation officer on various dates. I have also observed that no objection was taken by the representative of the management in the form of filing of a counter-reply with regard to delay of laches or inaction on the part of the workman. In the absence of any prohibition by the Legislature in the light of the factual position referred to above, it is not proper to reject the claim made by the workman before the Labour Court even at the threshold without considering the same by the Labour Court on the basis of evidence.

8. It is true that in the above referred decision *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , after considering Section 11-A of the Act, their Lordships have held that Section 11-A is prospective in its operation. As rightly contended by the learned Counsel for the second respondent, Section 11 -A gives wide powers on the Labour Court, whereas Section 2-A(2) is enabling provision for the affected workmen to approach the Labour Court to set right their grievance and to get appropriate reliefs. When there is a specific omission by the Legislature, namely, non-mentioning the period, it is not for this Court to prescribe some limit and reject the claim of the workman when the intention of the Act is to give relief to the affected workman. If such interpretation is given, undoubtedly it will be against the intention of the Legislature and certainly the object of the enactment would be defeated. Moreover, the change of procedure, namely, approaching the Labour Court directly without approaching the Government for reference, cannot be said to be prejudicial to the petitioner-management. In other words by change of procedure as done by the Legislature by way of introduction of a new subsection namely, Sub-section (2) to Section 2-A of the Act, I am of the view that the

petitioner-management has not lost anything. Undoubtedly, it paves way to the management to raise all its objections including the delay in approaching the Labour Court before the proceedings initiated by the workman . If there is any fault or laches on the side of the workman, undoubtedly it is open to the Labour Court to consider the same while granting relief. In other words, even the said apprehension of the management can be considered by the Labour Court on the basis of the evidence while granting relief.

9. It will be worth-while to refer a decision of the Supreme Court reported in *Rustom and Hornsby (I) Limited v. T.B. Kadam* (1975) 2 L.L.J. 352, wherein similar attack was made with reference to Section 2-A of the Apt. In the said decision, their Lordships have concluded thus:

The first argument on behalf of the appellant is that the incident took place in December, 1963 and the Order of dismissal was made on the 7th January, 1964 and as Section 2-A of the Industrial Disputes Act came into force on 1.12.1965 the reference of this dispute u/s 10 of the Industrial Disputes Act read with Section 2-A is bad. It is argued that this will amount to giving retrospective effect to the provisions of Section 2-A. We are not able to accept this contention. Section 2-A is in effect a definition section. It provides in effect that what would not be an industrial dispute as defined in Section 2(K) as interpreted by this Court would be deemed to be an industrial dispute in certain circumstances. As was pointed out by this Court in *Chemicals and Fibres of India Ltd. Vs. D.G. Bhoir and Others*, , the definition could as well have been made part of Clause (k) of Section 2 instead of being put in as a separate section. There is therefore, no question of giving retrospective effect to that section in making the reference which resulted in the award under consideration. When the section uses the words "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman" it does not deal with the question as to when that was done, it refers to a situation or a state of affairs. In other words where there is a discharge, dismissal, retrenchment or termination of service otherwise the dispute relating to such discharge, dismissal, retrenchment or termination becomes an industrial dispute. It is no objection to this to say that this interpretation would lead to situation where the disputes would be reopened after the lapse of many years and referred for adjudication u/s 10. The question of creation of new, rights by Section 2-A is also not very relevant. Even before the introduction of Section 2-A a dispute relating to an individual workman could become an industrial dispute by its being sponsored by a labour union or a group of workmen. Any reference u/s 10 would be made only sometime after the dispute itself has arisen. The only relevant factor for consideration in making a reference u/s 10 is whether an industrial dispute exists or is apprehended. There cannot be any doubt that on the day the reference was made in the present case an industrial dispute as defined u/s 2-A did exist. Normally the dispute regarding an individual workman is not an industrial dispute unless it is sponsored by the union to which he belongs or a group of workmen. The change made by Section 2-A is that in certain cases such a dispute need not

be so sponsored and it will still be deemed an industrial dispute. Supposing in this very case a labour union or a group of workmen had sponsored the case of the respondent before the reference was made, such a reference would have been valid. All that Section 2-A has done is that by legislative action such a dispute is deemed to be an industrial dispute even where it is not sponsored by a labour union or a group of workmen. What a labour union or a group of workmen can do the law is competent to do. The only question for consideration in considering the validity of a reference is whether there was or apprehended an industrial dispute when the reference was made. If there was an industrial dispute or an industrial dispute was apprehended, even though the facts giving rise to that dispute might have arisen before the reference was made the reference would still be valid. It is to be borne in mind that every reference would be made only sometime after the dispute has arisen. In *Birla Brothers Ltd. v. Modak* ILR (1948) Cal. 209, it was pointed out that though the Industrial Disputes Act came into force in 1947, reference of an industrial dispute based on the facts which arose before that Act came into force is a valid reference. The same reasoning would apply to a reference of a dispute falling u/s 2-A even though the facts giving rise to that dispute arose before that section came into force. The decision in *Birla Brothers'* case was approved by the court in its decision in *Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd.*, . These two decisions clearly establish that the test for the validity of a reference u/s 10 is whether there is in existence a dispute on the day the reference was made and there was no question of giving retrospective effect to the Act. We find that is the view taken by the Delhi High Court in *Management, National Productivity Council Vs. S.N. Kaul*, , by the Punjab and Haryana High Court in *Shree Gopal Paper Mills Ltd. v. The State of Haryana* 1968 L.I.C. 1239. The view of the High Court of Mysore in *P. Janardhana Shetty Vs. Union of India and Others*, , to the contrary is not correct.

The law laid down by the Supreme Court in the above referred decision is equally applicable to Section 2-A(2) of the Act also. In the light of the said conclusion of their Lordships, it is unnecessary for me to elaborate further on this aspect.

10. With regard to delay in approaching the Labour Court, that itself is not fatal for considering the industrial dispute raised by the workman. In a similar circumstances, *Kumar Rajarathnam, J.*, of the Karnataka High Court in a decision reported in *Karnataka State Road Transport Corporation v. I.A. Medleri* (1998) 1 L.L.N. 303, which arose out of a claim made by the workman after 9 years, has passed the following order after considering the earlier judgment of the Karnataka High Court in *B. Nagaraju v. Karnataka State Road Transport Corporation*:, Bangalore Division, Bangalore and another (1993) 2 K.L.J. 97:

Accordingly, the award is modified to the extent that the first respondent shall be reinstated into service and shall be entitled to all the consequential benefits and continuity of service not from the date of removal but from the date of reference, viz, 5 October, 1988. He will also be entitled to 50 per cent of back-wages from

the date of reference till the date of reinstatement.

11. In the light of what is stated above, I am unable to accept any one of the contentions raised by the petitioner. Further, it is also brought to my notice by the learned Counsel for the second respondent that on the date of filing of the writ petition, viz., 12.7.1991, the industrial dispute was not at all pending since even on 27.5.1991 there was an ex parte award passed by the Labour Court. It is true that the learned Counsel for the petitioner has submitted that immediately the petitioner-management had filed a petition for setting aside the ex parte award, accordingly, in effect dispute has been pending before the said court. Even though such a statement has been made, the same has not been substantiated by furnishing particulars regarding pendency of such application on the date of filing of the writ petition. Inasmuch as an ex parte award was passed on 27.5.1991 and the writ petition having been filed only on 12.7.1991, at any rate, writ of prohibition cannot be issued for the said reason. In the absence of any valid proceeding pending on the date of filing of the writ petition, the claim for issuance of a writ of prohibition does not arise.

12. Under these circumstances, I do not find any merit in the writ petition; accordingly the same is dismissed. No costs.