(1977) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No 2792/75

K. Ramulu APPELLANT

Vs

Industrial Tribunal, A.P and others RESPONDENT

Date of Decision : 09-06-1977

Acts Referred:
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 31(a), 33, 33(2), 33(2)(a), 33(2)(b)

Citation : (1977) 06 AP CK 0025

Hon'ble Judges : Madhava Rao, J;Alladi Kuppuswami, J

Bench : Division Bench

Advocate : G. Ramachandra Rao, for the Appellant; V. Jagannadha Rao, for the Respondent

Final Decision : Dismissed

Judgement

Alladi Kuppuswami, J.—The petitioner in these two writ petitions was appointed as an operator in the Hyderabad Vanaspati Ltd., which is the second respondent herein An industrial dispute, T. D. 80/71 was pending before the Industrial Tribunal, Hyderabad relating to revision of wages of the workmen of the second respondent company. On 10-10-1972 the matter was posted for hearing before the Tribunal. An incident appears to have taken place on that date and according to the second respondent the petitioner and others assaulted certain officers of the company. Accordingly on 13-10-1972 a show-cause notice was issued to the petitioner in which it was stated that on 10-10-1972 he was absent without any authorisation and attended the Court of the Industrial Tribunal along with others when he resorted to violence and assaulted and beat the officer and representative of the management and the union leader, that is, Sri D.S.R. Sastry, Sri B. K. Toshiwal and S. B. Mallesh in the premises of the Industrial Tribunal, who had come to attend the court, which was an act of grave misconduct and an act subversive of discipline. The petitioner was Called upon to show cause to why disciplinary action should not be taken against him. The petitioner replied on 20-10-1972 complaining that material particulars of the charge were not mentioned and the notice was vague, and ambiguous. He also requested the authorities to furnish copies of the complaints or reports lodged in regard to the alleged incident. He denied the allegations made in the notice and submitted that he had not attended the Industrial Tribunal on that day and did not take part in the incident. He further submitted that if better particulars and copies of the complaints and reports are furnished to him he would be in a position to tender his proper and comprehensive explanation. This explanation was not accepted and it is the case of the second respondent that his services were terminated with effect from 24-10-1972 though the petitioner denies that there was any such order of termination. Thereafter there was a strike on the part of the workers from 23-10-1972 to 30-11-1972. On 1-12 1972 the second respondent gave another notice to the petitioner in the following terms:--

You were served with order of termination on 24-10-1972. Your services stood terminated with effect from 24-10-1972. In protest of the termination ail the workers have gone on strike from 23-11-1972 to 30-11-1972. You have approached the management on 30-11-1972 and requested for a domestic enquiry to be conducted in individual cases to be considered on respective merits for a disciplinary action. The management has agreed to conduct a domestic enquiry and convert the order of termination into an order of suspension with effect from 24th October, 1972 pending enquiry into the charges as desired by you. Therefore you are placed under suspension pending enquiry.

2. This was followed by a notice dt. 2-5-1970 in which the second respondent stated that they had appointed one T.S., Sethuramachandran as an Enquiry officer to conduct a domestic enquiry which would be held on 9-5-1973. The petitioner was asked to attend the enquiry with all his witnesses. The petitioner replied by a letter dt. 8-5-1973 that it was inconvenient for him to attend the enquiry on 9-5-1973. He also stated that no charge memo was given to him on 1-12-1972 and on that day be was only served with the order of suspension and unless the nature of the enquiry was informed it would be futile to participate in the enquiry. He also complained that he was not given the list of witnesses proposed to be examined on behalf of the management. The second respondent replied on 21-5-1973 stating that the enquiry was adjourned to 31-5-1973. They also stated that the gist of the charge was already given to him as per the notice dt. 13-10-1972 namely that he assutted D.S.R. Sastry and B.K. Thoshinwal in the Industrial Tribunal on 10-10-72. It was mentioned that the witnesses to be examined were D.S R. Sastry and B.K. Thoshniwal. The enquiry was accordingly conducted on 31-5-1973. The above two persons were examined and were cross examined by the petitioner. Thereafter the enquiry officer submitted his report. The second respondent noted in the office file on the 4th June 1973 that the report was accepted and the petitioner''s service should be terminated. A formal letter dt. 13-6-1973 was written to the petitioner in the following terms :

I have carefully gone through the report of the enquiry officer and the findings. I agree with the findings of the enquiry officer. The misconduct is proved against you. I therefore order that you were removed from the service of this company with effect from 24-10-1972.

An Industrial Dispute in I.D. 80/71 is pending between the workmen and the management and by way of abundant caution, without admitting that you were the concerned workmen, we have decided to file a petition for approval of our action and a month''s wages of Rs. 275/- (Rupees two hundred and Seventy Five only) has been herewith sent to you per money order, the receipt number being 4471/dt. 9-6-1973 from Railway Quarters Post Office, as required under Sec. 33 (2-B) of the I.D. Act of 1947.

3. The money order referred to in this letter for the month''s wages was actually sent on 9-6-1973 and was received by the petitioner on 13-6-1973.

4. The petitioner filed on 27-6-1973 MP. 49/73 under Sec. 33A of the Act complaining that the provisions of Sec. 33 had been contravened by the employer in terminating his services and requesting the tribunal to adjudicate upon the complaint as if it were an industrial dispute referred to it The second respondent in its turn filed MP. 50/73 on 2-7-73, the application under Sec. 33-2(B) of the act for approval of the action taken by it in terminating the services of the petitioner. Both the petitioner were heard together by the Industrial Tribunal, Hyderabad.

5. At the request of the parties, the Industrial Tribunal considered the question whether the application filed by the second respondent for approval was maintainable and the question whether the domestic enquiry conducted by the second respondent was fair and proper as preliminary issues and its finding on those two issues by an order dated, 11-12-1973. Thereafter it proceeded to consider the other contentions raised by the parties and by an order dt 11-4-1974 allowed the application, MP. 50/73 filed by the second respondent and dismissed the application, M.P. 49/73 filed by the petitioner.

6. The petitioner has filed W.P. No. 3419/75 praying for the issue of a writ of certiorari to quash the order dt. 1-12-1973 giving its finding on the preliminary issues arising in M.P. 50/73. The petitioner also filed W.P. No. 2592/75 praying for the issue of a writ of certiorari to quash the final order passed in M.P. 60173 approving the action of the second respondent in terminating the services of the petitioner.

7. It is convenient to consider W.P. No. 3419/75 in the first instance as, if the petitioner succeeds in persuading us that the petition was not maintainable or that the domestic enquiry was not fair and proper, the other questions do not arise.

8. We shall first take up the question whether the application made by the second respondent under Sec. 33 (2) (b) of the Industrial Disputes Act before the tribunal was maintainable. In order to appreciate the contention of Sri Ramachandra Rao, learned counsel for the petitioner it is necessary to set out

Sec. 33 (2) (b) which is in the following terms:

During the pendency of any such proceeding in respect of an industrial dispute, the employer may in accordance with the standing orders applicable to a workman concerned in such dispute or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman :--

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman.

Provided that no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

9. It is seen from this section that the two essential requirements under the proviso are that the workman must be paid wages for one month and an application has to be made by the employer to the tribunal before which the proceeding is pending for approval of the action taken by the employer. The contention of behalf of the petitioner is that these conditions had not been complied with and therefore the Tribunal ought to have dismissed the application for approval at not maintainable.

10. The leading decision interpreting this provision is that of the Supreme Court in Strawboard Manufacturing Co. Vs. Gobind, where it was held that the proviso to Sec. 33 (2) (b) contemplates three things: (1) dismissal or discharge (ii) payment of wages and (iii) making of an application for approval to be simultaneous and to be part of the same transaction so that the employer when he takes action under S. 33 (2) by dismissing or discharging an employee should immediately pay him or offer to pay him wages for one and also make an application to the Tribunal for approval at the same time. The employer''s conduct should show that the three things contemplated under the provision are parts of the same transaction. The question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case, Sri Ramachandra Rao contended that the facts narrated above and the circumstances under which the termination of service was effected, the wages paid and the application for approval made, would clearly show that they are not parties of the same transaction and hence the application for approval was not maintainable. He submitted that the order of termination was made on 13th June 1973 whereas the money order for the month''s wages was sent even on 9th June, 1973 and the application for approval was filed on 2nd July 1973, nearly after 20 days after the order of termination All these three things referred to in Sec. 33 (2) (b) in this particular case are so disconnected that they cannot said to form part of the same transaction. The tribunal however negatived this contention a and came to the conclusion that they form part of the same

transaction. We are in agreement with the Tribunal. If has also been noticed that though the formal order was made on 13-6-1973 the concerned authority had noted on the file even on 4-6-1973 the decision to terminate the service. The actual order giving reasons namely, that the officer accepted the enquiry officer''s report and decided to terminate the services was made on 13-6-1973. In pursuance of the original determination a month''s wages were sent by Money Order on 9th June, 1973 which was received by the petitioner on the 13th June. Soon after the wages were received the order of termination was passed In that order itself it was mentioned that an industrial dispute, I.D. 80/71 was pending and the management had decided to file a petition for approval of the action and a month''s wages of Rs. 275/- and been sent to the petitioner as required under Sec. 33 (2) (b) of the Act. Subsequently, on 2nd July, 1973 the application for approval was filed. The order dt. 13-3-1973 clearly shows that even than the management had decided to file application under Sec. 33 (2) (b) for approval. It had already sent the month''s wages as required under Sec. 33 (2) (b). There cannot therefore be any doubt, that all these things formed parts of the same transaction.

11. Sri Ramachandhra Rao placed considerable reliance on the fact that the application was filed on the 2nd July 1973 after an inordinate delay of nearly 20 days and he submitted that the management had not explained this delay. He submitted that the application had to be filed immediately after the order of termination was passed. He no doubt admitted that some little time may lapse between the order of termination and filing of the application, but he argued that in this case the delay was inordinate and it cannot be said that the application was filed immediately after the order of termination, in the decision already referred to one of the questions was as to when the application for approval should be made. The Supreme Court while saying that the employer when he takes action under Sec. 33 (2) by dismissing or discharging of an employee should immediately pay him or offer to pay him wages for one month and also make an application to the, tribunal for approval at the same time observed that when they say that the employer must take action simultaneously or immediately they did not mean that the three things cannot he done one after the other. They observed that what they meant was that the employer''s should show that the three things contemplated under the proviso, namely, dismissal or discharge, payment of the wages, and making of the application are parts of the same transaction In this connection it is to be noted that there is no time limit prescribed for filing an application before the Tribunal. The real test according to the Supreme Court is whether the filing of the application can be treated as forming part of the same transaction as the termination of the service. Sri Ramachandhra Rao drew our attention to paragraph 30 of the decision referred to above in which after referring to the decision in Metal Press Works Ltd. Vs. Deb (H.R.) and Others, they observed that making of the application should be taken at once and without delay and it would upon the facts of each case whether the application has been made at once or without delay. He submitted

that when the application was filed more than 20 days after the termination and when the management has not come forward with any explanation for the lapse in time, it cannot be held that the application was made without delay. This submission in our view does not proceed upon a proper appreciation of the circumstances under which the Supreme Court said that the application should be made without delay. They had earlier observed that the real test is to see whether the filing of the application formed part of the same transaction as the order of the termination. The question whether the application was filed without delay or not is to be considered only in this context, namely, whether having regard to the delay in filing the application the Tribunal may come to the conclusion that the application did not form part of the same transaction. It is possible that notwithstanding the delay the tribunal may hold that the application formed part of the same transaction as the order of termination. In this case the tribunal rightly in our view considered the important circumstances that in order dt. 13-6-1973 the management had stated that they would file an application for approval under Sec. 33 (2) (b) and therefore came to the conclusion that filing of the application was part of the same transaction as termination of service. Sri Ramachandra Rao submitted that the petitioner had filed a petition under Sec. 31 (a) of the Act on 27-6-1978 and his right to question the validity of the order of termination would be taken away if subsequent to that petition the management were allowed to file application under Sec. 33 (2) (b) and obtain approval of the Tribunal. In this connection, however, it has to be noticed that the application was presented to the tribunal when he was in camp and was registered only on 5-7-1973 and there is nothing to show that the management was aware of the application and filed an application for approval with a view to circumvent the application made by the petitioner. On the other hand the very fact that the management had mentioned in the order dt. 13.6.1973 that they would be filing such an application would indicate that the filing of such application was decided upon even at that stage As has been pointed out by the Supreme Court the question whether the filing of the application or the payment of wages and the termination of service all form part of the same transaction is a question of fact which has to be decided according to the circumstances of each case. We therefore fail to see any error of law or error of jurisdiction involved so as to warrant interference under Art. 226 of the Constitution.

12. The learned Counsel for the petitioner drew our attention to two decisions of the Supreme Court in Poddar Mills Ltd, V Bhagwan Singh 1973 (I) LLJ 133 and Calcutta State Transport Corpn. V. Md. Noor Alam 1973 (1) LIJ 133. In the second case a note was sent to the workman on 22-6--967 that he was being removed from service with effect from 1-7-1967. The month''s wages were remitted to him on 28-6-1967 by money order which he received on 1-7-1967. An application under Sec. 33 (2) (a) was made on 3-7-1967. It was held that the employer''s conduct would show that the three things contemplated in proviso to sec. 33 (2) (b) were parts of the same transaction The Supreme Court observed that it is not necessary that all the three things mentioned therein should be

done on the same day. It is the conduct of the employers that has to be considered from the point of view of finding out whether the dismissal or discharge, payment of wages and making the application for approval form part of the same transaction. Sri Ramachandra Rao drew our attention to the sentence in the judgement in which they stated that a difference of a day in doing one thing or the other may be of material consequence and submitted that in this case, the difference is not one day but several days We do not understand the judgment of the Supreme Court to mean that in no circumstances can the difference be more than a day. The Supreme Court pointed out that no hard and fast rule can be laid down in these cases and each Case must be decided on its own facts In Poddar Mills Ltd V. Bhagwan Singh 1973 (2) LIJ 248 the order of dismissal was issued on 4th January 1968 by registered post which was returned undelivered on 8th January 1968. On that day the management applied under Sec. 33 (2) (b) for approval of the Tribunal One month''s wages were given to the workman on 2nd February 1968. The tribunal dismissed the application for approval holding that there was nothing in the application for approval to show why the mills had delayed the making of that application, The Supreme Court however, observed that as one of the essential requirements of the Act was not satisfied the order of Tribunal must be upheld though on different grounds It is clear that the ground on which the Supreme Court held that the proviso was not satisfied was that the wages were not paid at the time of the termination but long afterwards, that is, on 2nd February, 1968, Apparently they were of the view that one of the things required, namely, payment of wages did not form part of the same transaction as the termination of service. That is why they were careful enough to observe that the order of the Tribunal must be upheld though on different grounds. Sri Ramachandra Rao drew our attention to paragraph 5 in which it is noted that the tribunal observed that there was nothing in the application for approval to show why the mills had delayed the making of that application and argued therefore that the ground on which the tribunal dismissed the application was that there was delay in filing the application and the management had not explained the delay. He submitted that in this case also there was no explanation for delay in filing the application. On a careful reading of the decision, it is clearly seen that the Supreme Court was not willing to agree with this reasoning of the tribunal. They upheld the order of the tribunal on a different ground, tamely the wages were paid only on 2nd February and hence one of the requirements of Sec. 33 were not satisfied. Before the Supreme Court it was sought to be argued that the wages had been paid even on the 8th January, but the Supreme Court refused to allow the petitioner to urge this ground as it was not the ground urged before the Tribunal further and it was inconsistent with the pleadings. This decision in our view is not of any assistance to the petitioner. For the above reasons we are satisfied that the conditions laid down in Sec. 33 (2) (b) had been satisfied and the application for approval was rightly ordered by the Tribunal.

13. The Tribunal further went into the question whether the enquiry was fair and

proper and also in its final order dealt with the various contentions raised regarding the validity of the order of termination of service. It is now well settled that such findings of the tribunal in an application under Sec. 33 (2) (b) or 33A are not binding or conclusive in any industrial dispute that may be raised questioning the order of termination. For this reason, the learned counsel for the petitioner has submitted that he does not wish to trouble us with this contention and we need not go into that. Both the writ petitions are therefore dismissed with costs.

