

(1995) 06 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 20253 and 29278 of 1992

Karnataka State Road Transport Corporation

APPELLANT

Vs

N.H. Thippa Swamy

RESPONDENT

Date of Decision : 05-06-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 10 (4A), 9 C

Citation : (1995) 71 FLR 613 : (1995) ILR (Kar) 1719 : (1995) 3 KarLJ 631

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

Bench : Single Bench

Judgement

1. The question raised in this Writ Petition is the scope of Section 10(4A) of the Industrial Disputes Act, 1947 as amended. The worker of an industrial undertaking whose services were terminated challenged the validity of the termination before the Labour Court invoking Section 10(4A) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The order of termination in this case of the worker was issued on April 10, 1971 and the application u/s 10(4A) was made on October 6, 1988 i.e. nearly after 16 long years. The Labour Court after contest has held that the termination is illegal and has ordered reinstatement of the worker with 50% back wages. The employer has challenged the award in W.P. No. 20253/92 whereas the worker challenges the same in W.P. 29278/92 in so far as it denies 50% of the back wages.

2. One of the contentions urged on behalf of the employer is that even though Section 10(4A) of the Act does not prohibit adjudication of any question regarding termination or discharge effected prior to the coming into force of the said sub-section, still the Section should be read down and stale claims should not be entertained and on the date of seeking of adjudication the dispute should exist. Section 10(4A) of the Act reads as follows :

"(4-A). Notwithstanding anything contained in Section 9C and in this section, in the case of a dispute falling within the scope of Section 2A, the individual workman concerned may, within six months from the date of communication to

him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-Section (1) :

Note-An application under sub-Section (4-A), may be made even in respect of a dispute pending consideration of the Government for reference, on the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987."

3. A plain reading of the sub-section shows that, with respect to an industrial dispute falling within the scope of Section 2-A of the I.D. Act, the individual workman may apply to the Labour Court for the adjudication of the dispute within a period of six months from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987. The said Act commenced with effect from April 7, 1988, and hence any dispute falling within Section 2-A of the Act can be raised for adjudication before the Labour Court before October 7, 1988. The point urged is that the sub-section should be read down and unduly belated claims should not be entertained and adjudicated upon by the Labour Court, and it should be rejected on the ground of delay.

4. Now the wording of the sub-section shows that Section 10(4-A) proceedings is a stage past to Section 10(1). u/s 10(1) of the Act the Government may at any time refer any dispute to the Labour Court/Industrial Tribunal/Board. Whereas the wordings of Section 10(4-A) shows that the individual workman may apply to the Labour Court to adjudicate the dispute falling within Section 2-A of the Act and the Labour Court shall dispose of the same "in the same manner as a dispute referred under sub-Section (1)". Therefore the consideration of the application u/s 10(4-A) of the Act is post-reference stage and shall be in the manner as if a dispute has been received for adjudication u/s 10(1).

5. We may here notice that the proceedings for reference u/s 10(1) is administrative in nature (vide AIR 1973 SC 334). It is ruled in The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, by the Supreme Court that the Government has to come to an opinion that an industrial dispute did exist and that opinion could only be formed on the basis that there is an existing dispute between the employer and the worker relating to reinstatement. The Supreme Court has stated thus at P. 839 therein :

"... If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined must be a dispute between employers and employees, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute. Consequently, the material before the Tribunal clearly showed that no such industrial dispute, as was purported to be referred

by the State Government to the Tribunal, had ever existed between the appellant Corporation and the respondents and the State Government. In making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion. The Government had to come to an opinion that an industrial dispute did exist and that opinion could only be formed on the basis that there was a dispute between the appellant and the respondents relating to reinstatement."

It is further laid down in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, that for the exercise of the power u/s 10(1) and referring the dispute for adjudication there must exist an industrial dispute as defined under the Act or such dispute must be apprehended. It is further stated in the said decision at Page 257 that :

"no reference thus can be made unless at the trial which the Government decides to make it an industrial dispute between the employer and his employees either exist or apprehended."

Again the Supreme Court considered the question in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, as follows : in Para 6 at Page 4

"6 Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute when exists or is apprehended to the authorities mentioned in the Section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence or a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative Act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus, the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency, of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the experience of making a reference in the circumstances of a particular case are matters entirely

for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters (See State of Madras Vs. C.P. Sarathy and Another, .

6. Thus it is clear from what is stated above that before exercising the power u/s 10(1) of the Act, the Government should be satisfied that a dispute exists, or is apprehended and a reference thereof could bring about industrial peace. We find this view again reiterated in Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, where it stated as follows : in Para 14 at Page 273

".. A reference under the Act has to be made by the Government either when both parties requested the Government to refer an industrial dispute for adjudication or only when it is satisfied that there exists an industrial dispute. When an industrial dispute exists or is apprehended, the Conciliation Officer should first consider whether it can be settled after hearing both the parties and it is only when his efforts to bring about a settlement fail and he makes a report accordingly to the appropriate Government, the Government is called upon to take a decision on the question whether the case is a fit one for reference to the Industrial Tribunal or the Labour Court. It is only when a reference is made by the Government the Industrial Tribunal or the Labour Court gets jurisdiction to decide a case. It cannot, therefore, be said that each and every dispute raised by a workman would automatically end up in a reference to the Industrial Tribunal or the Labour Court."

7. These observation reaffirm the position that prima facie a dispute should be shown to "exist" at the time of reference u/s 10(1) of the Act is sought and to achieve industrial peace, the reference is being made to the Tribunal, Section 10(3) of the Act also is a pointer taking such a view. The said sub-Section is as follows :

"(3) Where an industrial dispute has been referred to a Board, (Labour Court. Tribunal or National Tribunal) under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the references."

8. It shows that because of the dispute, there was industrial unrest which resulted in the strike. It therefore follows that the existence of a live dispute is necessary to involve the power u/s 10(1). Conversely it can also be said that if the dispute does not "exist" or is not apprehended the Government may not exercise its powers u/s 10(1). It means in the words of the Supreme Court in Christian Medical College & Hospital Employees Union and Anr. v. Christian Medical College (supra).

9. We may here advert to the scope of adjudication of an industrial dispute as succinctly stated in Gwalior Rayons Vs. Labour Court and Others, as follows : in

"The scope of adjudication by a Tribunal under the Industrial Disputes Act is much wider than determination of the legal rights of the parties involved or redressing the grievances of an aggrieved workmen in accordance with law. As Gajendragadkar, J., points out in *The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others*, the adjudication by the Industrial Tribunal under the Industrial Disputes Act is only an alternative form of settlement, industrial disputes on a fair and just basis. The primary duty of the Industrial Tribunal is to establish peace in the industry between employer and workmen. Any unfair action by the management even against an individual worker might cast its shadow on the general body of workers who might get perturbed by such action. A resolution of the dispute might then become necessary for industrial peace notwithstanding the death of the workman concerned pending proceeding. The personal relief to the workman concerned to a certain extent occupies a subsidiary place in the scheme of things. Not that it is not important. It is only a consequential result of the decision primarily arrived at securing industrial peace settling the apprehension of the workmen without losing sight of the interest of the industry. As Rajamannar, C.J., stated in *Sree Meenakshi Mills Ltd. v. State of Madras* (1952 II LLJ 326) the essential object of enacting the Industrial Disputes Act is to provide recourse to a given form of procedure for the settlement of disputes in the interest of maintenance of peaceful relations between the parties without apparent conflicts such are likely to interrupt production and entail other damages. In the circumstances, proceedings before the Labour Court or Industrial Tribunal under the Industrial Disputes Act cannot be equated to a personal action in torts in a Civil Court which would come to an end with the death of the aggrieved party to the dispute. In the general set up of an industry, in the nature of the relationship between the employer and the employees, a dispute between an employer and even an individual employee generally affect the entire community of workmen in the industry. They acquire an interest in the dispute. It ceases to be an individual dispute and becomes an industrial dispute affecting the interest of the entire body of workmen."

10. We may notice that, the decision of the Supreme Court, indicates in clear terms that the primary duty to decide as to whether an industrial dispute existed or is apprehended in an industrial undertaking is cast on the authority who exercises the power u/s 10(1) of the Act. But in an application u/s 10(4-A) the worker arrives before the Labour Court on the assumption that an industrial dispute falling within the ambit of Section 2A of the Act exists. He therefore, calls upon the Labour Court to adjudicate the same.

11. If before a dispute is to be referred u/s 10(1) of the I.D. Act, the Government has to form an opinion as to whether a dispute as alleged existed in or is apprehended then before the Tribunal further proceeds with that adjudication of the dispute brought before it u/s 10(4-A), should it not decide whether the particular dispute raised before it exists or is apprehended on the

date of the application u/s 10(4-A) of the Act ? As stated by the Supreme Court in *Christian Medical College and Hospital Union and Anr. v. Christian Medical College* (supra) at paragraph 14 :

"It cannot therefore be said that each and every dispute raised by a workman would automatically end up in a reference to the Industrial Tribunal or the Labour Court."

12. As we have noticed supra, the Labour Court may be called upon to adjudicate upon an existing or apprehended dispute. Hence in order to invoke the adjudicatory machinery of the Labour Court, the existence of a dispute at the time of invoking of the jurisdiction u/s 10(4-A) is a basic requirement. Absence of this jurisdictional factor will take away the jurisdiction of the Labour Court to proceed further u/s 10(4-A). Therefore every application made before it u/s 10(4-A) of the Act should not be treated as relating to a dispute that existed on the date of the application. The Labour Court should examine and form an opinion as to whether the dispute brought before it for adjudication existed for it to adjudicate. This is the determination of the jurisdictional question, that the Labour Court should decide in an application made u/s 10(4-A) of the Act before it proceeds further. It admits of no doubt that every Tribunal has power to decide whether it has jurisdiction to try the issue before it. In the words of Lord Goddard :

"If a certain state of facts has to exist before an inferior Tribunal have jurisdiction, they can enquire into the facts in order to decide whether or not they have jurisdiction."

[See *R. v. Fulham etc. Rent Tribunal Ex. P. Zerek* 1951 2 K.B. 1. (Quoted in *Wade-Administrative Law*).

13. A finding has to be entered by the Tribunal in this behalf. When thus the Labour Court enters a positive finding on the question whether the dispute raised by the worker in the proceeding u/s 10(4-A) existed on the date of such initiation of the proceeding, it can be said that it gets jurisdiction to proceed further in the matter. A negative finding will destroy its jurisdiction to admit for consideration the application submitted by the worker.

14. As stated by the Supreme Court in *M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others*,

"The rule which says that the Court may not enquire into berated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy, claimed are and how the delay arose. The principle on which the relief of the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reasons of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine

delay in such cases is that the petitioner should come to the Writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence."

15. Refusal to adjudicate a stale claim is a rule of practice based on sound direction. Each case should be decided on its own merits. The question whether a dispute exists should be decided by the Court taking into account several aspects such as whether there has been justifiable reason for the delay or whether the worker was questioning his dismissal before other Forums and had kept alive the issue etc. These are all matters for pleading and evidence, and to be decided in an individual case.

16. In these cases, the Labour Court has not applied its mind and entered a finding as to whether an industrial dispute existed between the worker and employer or whether there has been a proper explanation for the delay in invoking the jurisdiction u/s 10(4-A). I would therefore set aside the award passed by the 1st respondent and direct the Labour Court to adjudicate the application by the worker u/s 10(4-A) of the Act and dispose of the same afresh in accordance with law within a period of six months from today. All the contentions urged by the worker in W.P. 29278/92 can be raised before the Labour Court which shall deal with the same also in accordance with law. Writ Petitions are disposed of accordingly.