
(1994) 04 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 2510 of 1985

K.D.S. Williams

APPELLANT

Vs

Management of Hindustan Machine Tools Ltd.

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10 (1) (c), 33 (2) (b)

Citation : (1994) ILR (Kar) 1423 : (1994) 2 KarLJ 499

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Judgement

Tirath Singh Thakur, J.—The petitioner challenges the validity of an order dated 29th of September, 1982 passed by the II Additional Labour Court, Bangalore in Reference No. 91 holding that an order passed in proceedings u/s 33(2)(b) of the Industrial Disputes Act, hereinafter referred to as the Act, operates as res judicata, in any future proceedings between the parties.

2. The facts in the back-ground are brief and may be stated first :

The petitioner Mr. K. D. S. Williams (now deceased and substituted by his legal heirs) was working with the Respondents Company. He was dismissed from service with effect from 18th September, 1976, as a consequence whereof an Industrial Dispute was pending before the Industrial Tribunal. The first respondent made an application u/s 33(2)(b) of the Act, for grant of approval of the said order of dismissal. This approval was granted by the Labour Court on 31st August 1977. The petitioner again raised an Industrial Dispute before the Conciliation Officer (Assistant Labour Commissioner) and upon the failure of the Conciliation proceedings, the matter was submitted to the Government for a Reference which was declined. The petitioner thereafter filed a Writ Petition in this Court for a Writ of Mandamus directing the Government to make a Reference u/s 10(1)(c) of the Act. This Petition was allowed and the Government directed to make a Reference. On the said Reference being made the petitioner filed a statement of claim before the Labour Court, in response whereto the

Management submitted its counter statement. It appears that one of the points urged by the Management was as to the effect of the order of approval granted by the Labour Court to the dismissal of the petitioner. It was contended that the said order operated as *res judicata* between the parties against all future controversies regarding the validity of the enquiry leading to the dismissal of the petitioner.

3. The Labour Court upheld this contention of the Management by its order dated 29th September, 1984. It is against this order that the present Writ Petition was filed by the deceased employee.

4. I have heard the learned Counsel for parties and perused the records.

5. Mr. Subba Rao, learned Counsel appearing for the petitioner contended that the Labour Court fell in error in holding that the principles of *res judicata* were applicable to the instant case. He submitted that in the proceedings u/s 33(2)(b) of the Act, the Labour Court while considering the question of approval of order of punishment only takes a *prima facie* view of the matter, which view is subject to a proper determination by the competent Labour Court upon a proper Reference being made in terms of Section 10(1)(c) of the Act.

6. Mr. Prabhakar, learned Counsel appearing for respondent, however, supported the order impugned and submitted that an order of approval granted by the Labour Court was passed by the Court concerned after consideration of the matter and in particular the validity of the domestic enquiry which enquiry having been upheld by the approving Court cannot be question in a subsequent Reference u/s 10 of the Act.

7. The scope of Section 33 of the Industrial Disputes Act, has been the subject matter of a long string of Judgments of the Apex Court and other Courts in the Country. In *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, Their Lordships of the Supreme court held that the purpose of Section 33 of the Act was merely to give or withhold permission and not to adjudicate upon an industrial Dispute. It is also held that a finding in the proceedings u/s 33 of the Act did not operate as *res judicata* or a bar to the raising of an industrial Dispute.

8. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Apex Court had another occasion to examine the nature of the proceeding u/s 33 of the Act and the effect of an order passed under the same. I may gainfully quote the following passage from the said judgment :

"Where an application is made by the employer for the requisite permission u/s 33 the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a *prima facie* case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or an unfair labour practice, the tribunal has to limit its enquiry only to the question as

to whether a prima facie case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the said of excessive severity; nor can be tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according as it holds that a prima facie case is or is not made out by the employer.

25) But it is significant that even if the requisite permission is granted to the employer u/s 33 that would not be the end of the matter. It is not as if the permission granted u/s 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal by the union by raising an industrial dispute in that behalf"

9. The question as to whether an order passed u/s 33 of the Industrial Disputes Act, approving dismissal of an employee operate as res judicata in a reference made u/s 10 of the Act, however, specifically arose in *The Management of M/s. Amalgamated Elec. Co. Ltd. Belgaum Branch v. Workmen of M/s. Amalgamated Electricity Co. Ltd., Belgaum* 1975 LIC 879, where a Single Judge of this Court (E. S. Venkataramiah J, as His Lordship then was) ruled that finding recorded in proceeding u/s 33(2)(b) of the Act regarding the validity of a domestic enquiry cannot be used as res judicata in subsequent Reference u/s 10 of the Act. This Court held thus :

"The finding recorded in a proceeding u/s 33(2)(b) regarding the validity of a domestic enquiry cannot be used as res judicata in a reference u/s 10 even though the questions that arise for consideration are the same. In the circumstance it cannot be held that the Additional Industrial Tribunal in the instant case has committed any jurisdictional error."

10. To the same effect is the Judgment of a Division Bench of the Calcutta High Court in *M/s. Graphite India Ltd. v. State of West Bengal & Ors.* 1979 LIC 1279, where Their Lordships relying upon the Judgment of this Court in the *Management of M/s Amalgamated Elec. Co Ltd.* 1975 LIC 879 supra, observed thus :

"In a proceeding u/s 33(2)(b), the Tribunal may approve of the action of the employer against his employee on a prima facie finding that the enquiry held against the employee was proper and legal and that all the principles of natural justice were complied with. The Tribunal is, therefore, not to decide finally as to the legality and propriety of the enquiry but it comes to a prima facie finding in that regard. As the point cannot be said to have been finally decided by the Tribunal, there is no question of the finding of the Tribunal operating as res judicata in a subsequent proceeding."

11. The Learned Counsel for petitioner also placed a certified copy of the Judgment of this Court in *Sri. T. A. Ansarmuthu v. The Management of HMT Ltd. & Anr.* W. P. No. 13909 of 1987 dt. 27.6.1989. In the said Judgment this Court

following the view taken earlier in *The Management of M/s. Amalgamated Elec. Co. Ltd.* Case 1975 LIC 879 repelled the contention that an order passed u/s 33 of the Act, operates as res judicata in any future proceedings arising out of a Reference u/s 10 of the Act.

12. Mr. Prabhakar, appearing for Respondent however, urged that since the principles of res judicata were applicable if not the doctrine itself, an order passed by the Tribunal u/s 33 of the Act, upholding validity of the enquiry held against the employee should operate as res judicata on the basis of the said principles. I see no reason to extend the application of the principles of res judicata to a situation where the view taken by the Labour Court is based on a prima facie examination of the matter and not a final or conclusive determination of the issue. As a matter of fact Their Lordships of the Supreme Court have in *Workmen M/s. Hindustan Lever Ltd. v. Management* 1994 LIC 276 disapproved of the tendency to extend the technical concepts of res judicata as applicable to Civil proceedings to industrial Disputes under the Act. Their Lordship observed thus :

"It is inappropriate to usher in the technical concept of res judicata pervading the field of civil justice into the field of industrial arbitration. But one can safely say that principle analogous to res judicata can be availed of to scuttle any attempt at raising industrial disputes repeatedly in defiance of operative settlements and awards. But this highly technical concept of civil justice may be kept in precise confined limits in the field of industrial arbitration which must as far as possible be kept free from such technicalities which thwart resolution of industrial disputes."

13. The above observations are apposite for the present case as well Besides the fact that proceedings under the Industrial Disputes Act, are not proceedings in the nature of a Civil proceedings in a Civil Court, so as to attract the technical rules of res judicata, a finding wherein in its very nature is only a prima facie view of the matter can hardly be treated to be a final adjudication so as to forbear a second look on the same. I accordingly hold that an order passed u/s 33(2)(b) of the Act, does not debar a Labour Court from examining the validity of the enquiry held against the dismissed employee on the Doctrine or the principles of res judicata. The Labour Court can in an appropriate Reference made to it examine the validity of the domestic enquiry notwithstanding an order passed by it approving the dismissal u/s 33(2)(b) of the Act.

14. In the result, the Writ Petition is allowed and the judgment and order impugned is hereby quashed. In the circumstances of the case, however, I leave the parties to bear their own costs.