

(1959) 08 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 365 of 1959

Kripa Printing Press, Putli Bowli, Hyderabad by Yeshwant Rao	APPELLANT
Vs	
Presiding Officer Labour Court, Hyderabad and Another	RESPONDENT

Date of Decision : 18-08-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1960 AP 489 : (1960) 1 FLR 450 : (1960) 1 LLJ 53

Hon'ble Judges : Bhimasankaram, J

Bench : Single Bench

Advocate : D.M. Deshmukh and H.G. Kulkarni, for the Appellant; 3rd Government Pleader, M. Lakshmana Rao and M.S. Rajalingam, for the Respondent

Judgement

Bhimasankaram, J.—This is an application under Article 226 of the Constitution for the issue of a writ of certiorari quashing the order of the Labour Court, Hyderabad dated the 23rd December 1958. One of the points raised before the Labour court was whether there was at all an "industrial dispute" within the meaning of the Industrial Disputes Act (vide Section 2 Clause (k)). It is admitted that the dispute at its inception was between a single workman, the contesting respondent and the petitioner. The petitioner disputed the validity of the reference on the ground that as a matter of fact the dispute was not an "industrial dispute" and that there-fore the Government could not refer it to the tribunal. As has been pointed out in several decisions, the order of reference is an administrative order.

The Labour Court, strictly speaking, is not concerned with the validity of the reference; but with its own jurisdiction to adjudicate upon the matter. That jurisdiction rests upon the existence of an industrial dispute. Further, it is also well-settled that a dispute between an individual workman and the management can become an ""industrial dispute" when that dispute is sponsored by his Union or a number of fellow workers. In dealing with the point so raised in the present case, the Labour Court, it seems to me, has, to begin with, made a wrong

approach. It states in its order that "the employer made no attempt to show that the workman is not a member of the Workers' Union or that the dispute is not taken up by the Union from its initial stages."

That the workman concerned is the member of a Union does not make his dispute with the management an union dispute; Nor is it the duty of the management to establish that the dispute is not an "industrial dispute". It is for the workman to show that his cause has been sponsored by his Union or by a number of workmen of his class. It must be remembered that the Labour Court is a statutory tribunal exercising a special jurisdiction and as such when its jurisdiction is challenged, it is for the person invoking its jurisdiction to establish, the facts up on which the jurisdiction rests. There is no finding in this case that the dispute has been taken up by the respondent's union or a group of fellow workmen. Then, after referring to certain passages from the authorities which deal with the definition of the phrase "Industrial Dispute", the Court proceeded to observe :

""It is also on record that subsequent to the dispute conciliation proceedings were started and the worker was represented thereat by the workers, Union."

The initiation of conciliation proceedings does not necessarily establish that there was an industrial dispute; even if there was no industrial dispute but one was merely apprehended, the Conciliation Officer might u/s 12 of the Industrial Disputes Act assume jurisdiction and in the proceedings before him between the workman and the employer, the workman is entitled to be represented, u/s 36 of that Act, by an officer of the Trade Union of which he is a member; the fact therefore that he was so represented does not, by itself, indicate that the Union itself was acting on behalf of the workman. The fact that an officer of the union presented a form before the Conciliation Officer countersigned by the Secretary of the Union certifying that he is an officer of the union, does not mean that the dispute was espoused by the union. Nor does the fact that the Conciliation Officer acted as if an industrial dispute existed afford sufficient evidence for the Labour Court to find that there was in fact an industrial dispute. If the fact that the union or a number of fellow workmen sponsored his cause is challenged by the management before the tribunal, the worker must establish that fact and there should be a finding recorded by it that although, to start with, the dispute originated as a dispute between an individual workman and the management, it subsequently became an industrial dispute. It is frankly conceded for the respondent that there is not only no finding to that effect but there is no evidence on record to justify any such inference. In this view, the proceedings before the Labour Court were completely without jurisdiction and must be quashed. I, therefore, propose not to consider the other points that have been raised before me.

2. A writ of certiorari will issue quashing the proceedings of the Labour Court. The petitioner is entitled to his costs. Advocate's fee Rs. 50. Writ issued.