
(1981) 11 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 4065 of 1979-A

K.V. Kumaran

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 17-11-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1981) 11 KL CK 0013

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : M.M. Cherian and Mathew Zacharia, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sukumaran, J.—This petition filed by the Secretary of the Rice Mill Thozhilali Sangham, seeks to quash two orders passed by the first Respondent--Labour Court, Kozhikode in relation to an industrial dispute referred to it, being I.D. No. 87/1977, the issue referred being "the denial of employment to Sri Vella son of Nayadi".

2. The casualness with which this reference had been treated by the Petitioner--Union has been dealt with at considerable length in paragraph 2 of Ext. P-1 award of the Labour Court. It has stated that the reference stood initially posted to 20th December 1977, when both parties were present and when the Union was directed to file its written statement by 11th January 1978. The written statement was not filed by the stipulated time. There was no sitting of the Labour Court on that day. The case was adjourned to 8th February 1978. No written statement was filed on that day either. Further adjournment was granted to 9th March 1978. Even on that date, the Union sought for time and the Court granted it making it a final posting for the filing of written statement on 20th April 1978. This opportunity was also not utilised by the Union; the Labour Court was forced in the above circumstance to proceed with the matter in the absence

of the statement of the Union. The Labour Court applied its mind to the issue referred before it, and observed, correctly according to me, that it was for the Union to substantiate the contentions in relation to the dispute, having regard to the nature of the issue referred. The Labour Court noted that there was no written statement on the part of the Union. An action taken in relation to an employee of the second Respondent, in the absence of challenge about the legality of the action or the authority of the employer, was according to the Labour Court, to be upheld. It is in that view that the award was passed "upholding the action taken by the management".

3. On 10th May 1978, the Union filed M.P. No. 192/1978, an application for permitting the Union to file the claim statement and proceed with the adjudication. It is the complaint of the Union that no order was passed on that application. Apparently no further steps had been taken by the Union to move the Labour Court and to seek orders thereon. The award was published in the Gazette on 18th July 1978. The request of the Union was renewed by filing M.P. No. 341/1978, by which the Union prayed that the award may be set aside and a fresh award on merits be passed. In support of its plea for reopening of the award, and in justification of its absence on earlier occasions, the Secretary of the Union gave evidence that he was unwell, that he had been laid-up on 20th April 1978, that a doctor had treated him and that the prescription and the bill relating to such treatment were with him. The Labour Court, however, after considering his evidence and adverting to the anterior circumstances, did not choose to act upon the evidence of P.W. 1, the Secretary of the Union. This is what it stated in the order Ext. P-2 by which the application M.P. No. 341/1978 had been rejected on 17th May 1979:

Except a bare statement in M.P. 192/78 and in the chief examination of P.W. 1, there is no other independent evidence in proof of the illness with which the Petitioner is stated to have been suffering from. There is no reason also stated as to why he did not produce the prescription and the cash bill of purchase of medicines which would have proved his case regarding the illness. In the absence of the production of the documents and independent evidence being adduced in support of the plea of illness, the contention of the Petitioner that he was laid up with illness cannot be held to have been proved.

4. Whether there was justification enough on the part of the Secretary of the Union not to have been present on 20th April 1978 and whether there was sufficient cause for his absence on that day when the case stood posted, are all essentially matters for the Labour Court to decide. The Labour Court considered all the aspects, and in the light of the appreciation of evidence made by it, did not find its way to accept the plea of the Union in justification of its absence on 20th April 1978. In the realm of appreciation of evidence, the jurisdiction of this Court under Article 226 of the Constitution is indeed a very attenuated one. The conclusion arrived at by the Labour Court cannot be characterised as a perverse one. It cannot be complained that there has not been an application of the mind

to the relevant circumstances. Even assuming that a different conclusion is possible, particularly having regard to the fact that the employer had not chosen to adduce any evidence contrary to the oral evidence given by the Secretary of the Union, (this circumstance was urged with great force before me by counsel for the Petitioner), that is hardly a justifying circumstance warranting interference with the order of the Labour Court. The petition for reopening of the award was hotly contested by the employer. The plea regarding the alleged illness of the Secretary was disputed in the counter statement of the Management. The Labour Court felt that the best evidence namely, the prescription given by the Doctor and the bill evidencing the purchase of medicine, which the Secretary admitted were in his possession had not been produced. If in such circumstances, the Labour Court did not act upon the evidence of the Secretary, the action of the Labour Court cannot be held to be one lacking in jurisdiction or a capricious, perverse or arbitrary exercise thereof. It must also be remembered that the reference was made by the Government in the year 1977. The issue was not one of a complicated nature or one which required reference to elaborate documentary evidence. The physical presence of the Secretary was not indispensable for filing the claim statement. The tendency to protract legal proceedings has incurred judicial wrath (See R.V. Lawrance 1981. 1. All E.R. 974) where Lord Hailsham condemned in dignified language, the delay in the disposal of cases; the learned law Lord observed that this "backlog (of cases) has been a source of particular anxiety; and emphatically asserted; "where there is delay the whole quality of justice deteriorates". Even in consensual jurisdictions like private arbitration there is a strong view that a claimant guilty of non-prosecution can be prevented by an injunction from further pursuing his claim on the ground that "delay can mean justice denied". (See the observations of Lord Scarman in Bremen Valkam v. South India Shipping 1981. 1. All E.R. 289 though the majority in the House of Lords appeared to take a different view). That such a course is permissible in a Court of justice or statutory tribunal appears to be beyond the pale of controversy. Prompt despatch of business is of particular importance before a tribunal adjudicating an industrial dispute. Dilatory tactics must necessarily be discouraged. The Tribunals and Labour Courts in our State, of course, show as they ought to considerable indulgence to the trade unions or workers, in the conduct of the disputes when the trade unions or workers are handicapped in affectively prosecuting their claims by genuine reasons. However, when a claimant in a dispute appears to be contumacious in its conduct, the Tribunal is justified in relieving the opposite party of the ill-effects of such harassing dilatoriness. Such action on the part of the tribunal cannot be condemned outright, particularly when the employer (as in the present case) is not a mighty industrial establishment. The impact of starting a new in late 1981, proceedings regarding an action taken in 1976 cannot be lost sight of. I therefore hold that the order Ext. P-2, in so far as it has disbelieved P.W. 1 and rejected his prayer for the reopening of the award, cannot be interfered with in these proceedings.

5. As regards the legality of Ext. P-2 award, elaborate arguments were advanced before me by counsel for the Petitioner. He referred to the definition of the term "award" with particular emphasis on the component relating to the adjudication on merits. There has not been any adjudication whatever on merits and consequently Ext. P-1 does not measure up to the requirement of an award as understood in law-so proceeded the submission of counsel for the Petitioner. In support of that submission, he relied on various decisions, including a decision of the Supreme Court in *Cox and Kings Ltd. v. Workmen* 1977 (1) L.L.J. 471 wherein in paragraph 22 and 25, the Supreme Court gave due emphasis on an adjudication on merits as one of the essential requirements for the valid making of an award. Similar decisions, reported in *Har Prasad Engineering Workshop v. State of U.P.* 1964(1)L.L.J. 607, *Elite Engineering and General Works v. Labour Court Jullundur* 1969 Labour Industrial Case 58 and *Dawood Khan v. Labour Court* 1969 (2) L.L.J. 611 were also relied on.

6. In spite of the persuasive arguments so advanced, I am of the view that having regard to the particular circumstance obtaining in the present case, the principles laid down in those decisions do not have any application.

7. In *Cox and Kings Ltd. v. Workmen* 1977 (1) L.L.J. 471 the Supreme Court had to deal with a situation where the validity of a second reference was called in question. A second reference would be incompetent if an earlier award in conformity with law was subsisting. Whether there was an earlier award, was, therefore a matter for consideration by the Supreme Court. In the earlier proceedings, the Management contended that there could not be a validly referable industrial dispute, as the Union had not raised such a dispute with the Management; the condition precedent for there being an industrial dispute was therefore totally lacking. The reference was therefore incompetent and the Tribunal had no jurisdiction whatever to make an award. This contention urged as a preliminary issue was upheld by the Tribunal, which held on a consideration of the facts and materials before it that there was no valid reference of a dispute. This determination of the Tribunal was considered by the Supreme Court in the aforesaid decision as one not amounting to an adjudication on merits. In that background, and in that factual matrix, the observations in paragraphs 22 and 25, which emphasises the requirements of an adjudications on merits for a valid award, are fully understandable; they are however, not applicable to the present case in view of the obvious differences in the factual details. As stated earlier, in the present case, the dispute referred related to the denial of employment to a workman. Whether there had been a denial and if so the circumstances leading to it, and the factors tending to invalidate such a denial of employment are all matters for pleading and proof by the Union. Only after such a pleading comes from the Union can the veracity of the statements be gone into in the background of a written statement, if any, which is filed by the Management. The Union had, despite repeated opportunities, not chosen to file its statement. In that set up, even on an adjudication on merits, an award that could be passed is one negating the claim of the Union, which had not sustained the onus which

lay on it for establishing the denial of employment and for the illegality of such actions. I am therefore of the view that in the circumstances and in the light of the facts referred to above, Ext. P-1 award does satisfy the requirement of an award, as there is an application of the mind by the Labour Court to the circumstances and an adjudication on the merits of the claims.

8. The decision in Pandavapura S.S. Karkhane Ltd. v. State of Mysore 1969 Labour and Industrial Cases 729 is also distinguishable. There, admittedly the pleadings were already before the Labour Court. There was an adjournment of hearing on one occasion at the instance of the workmen. On the next occasion, a further adjournment was sought. This was declined. The Tribunal then proceeded to make the award observing: "The reference fails and the same is rejected". This order was held to be not a proper one in the light of the facts noted above by the Mysore High Court. As stated earlier, the present case is distinguishable because the Union has not chosen in this case to file its pleadings and consequently there had been no material whatever for the Labour Court to proceed further with the matter or for discussion on rival contentions.

9. In the Punjab High Court also, the pleadings had been already filed, steps had been taken for adducing evidence and summoning witnesses and request had been made for adjournment of the hearing in the circumstances which justified such a request. In the background of those facts, the High Court held that the Labour Court was not justified in proceeding with the hearing of the case declining the Union's claim and passing an award. This too has no application in relation to the facts of the present case.

10. The decision in Har Prasad Engineering Workshop v. State of U.P. 1964 (1) L.L.J. 607 in paragraph 3 observes generally that an award shall discuss all aspects. However, the difficulty which confronts an authority in the absence of any pleadings whatever, particularly of the pleadings of the party on whom the burden lies, had not been considered in that judgment. The observation that the Tribunal has no jurisdiction to decide disputes without going into the merits of the case, will not also be helpful to the Petitioner, for, as observed earlier, according to me, there has been an application of the mind by the Labour Court of the matters before it, and a decision on merits viz., that the Union was not entitled to any relief, was entered by it. Even on the basis of the observations of this decision, I am of the view that the Labour Court was justified in declining relief to the Union, having regard to the context, and the facts and circumstances.

In the result, notwithstanding the elaborate arguments of counsel for the Petitioner, I do not find my way to interfere with the award Ext. P-1 and the order Ext. P-2 passed by the 1st Respondent-Labour Court. The writ petition is therefore dismissed, but without any order as to costs.