

(2022) 06 KAR CK 0039

In the Karnataka High Court

Case No : Writ Appeal No. 497 Of 2022 (L-RES)

Management Of Bharat Fritz Werner Ltd.

APPELLANT

Vs

Bharat Fritz Werner

RESPONDENT

Date of Decision : 29-06-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 32(2)(b)

Karnataka High Court Act, 1961 — Section 4, 5

Constitution Of India, 1949 — Article 217(2)(a), 226, 227, 233, 233(2), 234, 235, 236

Citation : (2022) 06 KAR CK 0039

Hon'ble Judges : Ritu Raj Awasthi, CJ; Ashok S. Kinagi, J

Bench : Division Bench

Advocate : K. Kasturi, Subha Ananthi K, K. Mohan Kumar

Final Decision : Dismissed

Judgement

Ashok S Kinagi, J

1. This writ appeal arises out of the order dated 21.4.2022 passed in W.P.No.43940/2011 by the learned Single Judge.

While hearing the writ appeal, an issue was raised in regard to the issue of maintainability of the writ appeal. However, to understand and appreciate the nature of proceedings before the Labour Court, it is deemed expedient to state the factual matrix.

2. Brief facts leading rise to the filing of this appeal are as under :

The petitioner/appellant is engaged in the manufacture of machine tools. The management entered into settlement with the Union i.e. the respondent for a period of three years and eight months. One of the clauses of the settlement was that the workman should not stage any strike during the subsistence of the settlement and the management should not declare a lockout. The respondent violated the terms of settlement and staged a strike. The petitioner issued a charge sheet-cum-notice of enquiry to four workmen and conducted a

departmental enquiry. The petitioner dismissed the four workmen from service. The workmen filed an application under Section 32(2)(b) under the Industrial Disputes Act, 1947 and subsequently the appropriate Government, referred the issue of dismissal of the workmen to the Labour Court, Bengaluru in Reference No.40/97. The Labour Court passed an award on 5.8.2001 and ordered reinstatement of three workmen with full backwages, continuity of service etc. The petitioner aggrieved by the order/award passed by the Labour Court, Bengaluru, filed the writ petition in W.P.No.43940/2011. The learned Single Judge dismissed the writ petition. The appellant/petitioner aggrieved by the order passed in the writ petition filed this writ appeal.

3. In the course of hearing, the issue that had fallen for consideration was about the maintainability of the Intra Court appeal.

4. Heard the learned Senior Counsel Sri K. Kasturi, for the appellant.

5. He submits that the petitioner filed the writ petition under Article 226 of the Constitution of India seeking for the prayer of certiorari to quash the award dated 5.8.2011 passed by the Labour Court, Bengaluru and that the writ petition is not under Article 227 of the Constitution of India and therefore, the writ appeal would be maintainable. In support of his contention he has placed reliance on the following judgments:

1. Syndicate Bank & another vs. K. Umesh Nayak 1994-II LLN 1296-1311
2. HMT Ltd. vs. HMT Head office Employees' Association & Others 1997 (1)LLN 28-40
3. Panyam Cements & Minerals Industries Ltd., Wire Division, Bengaluru vs. Deccan Wire Employees' Association, Bengaluru & Another 1998 LLR 1128-1134
4. Devendra Swamy vs. KSRTC 2002 (1) LLJ 454-456
5. Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya and Another 2002 (2) LLJ 1156-1160
6. Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane 2005 (3) SCC 254-259
7. Mahindra & Mahindra Ltd vs. N.B.Naravade etc. 2005 LLR 360-365
8. Novartis India Ltd. vs. State of West Bengal & Others 2009 LLR 113-121
9. Rajasthan State Road Transport Corpn & Another vs. Satyaprakash 2013 (9) SCC 232

4. Heard and perused the records.

5. The question that arise for consideration is as under :

"Whether intra-court appeal under Section 5 of the Karnataka High Court Act would be maintainable against an order passed by the learned Single Judge assailing an award passed by the Labour Court?"

6. In order to consider the said issue, it is necessary to consider Section 4 of the Karnataka High Court Act (hereinafter referred to as 'the Act' for brevity).

4. Appeals from decisions of a single Judge of the High Court - An appeal from a judgment, decree, order or sentence passed by a single Judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court."

Section 4 of the Act provides for appeals from a judgment, decree, order or sentence passed by a Single Judge in exercise of the original jurisdiction of the High Court.

The definition of 'original jurisdiction' in the Act is not defined. In the absence of definition, we place reliance upon the Black's Law dictionary with a view to interpret the phrase 'original jurisdiction' which is found in Section 4 of the Act. As per Black's Law Dictionary 'original jurisdiction' is :-

'Jurisdiction in the first instance'

7. Admittedly, the writ petition is filed by the appellant challenging the award/order passed by the Labour Court, Bengaluru. In catena of decisions, the Hon'ble Supreme Court culled out the principles governing the difference between the 'writ of certiorari under Article 226 of the Constitution of India' and the 'supervisory jurisdiction under Article 227 of the Constitution of India'. It is no longer res integra that it is open to the Court while dealing with the petition filed under Article 226 and/or 227 of the Constitution or Intra Court Appeal under Section 4 of the Karnataka High Court's Act 1961 arising from the judgment in which the petition could determine whether the facts justify the party in filing the petition under Article 226 and/or 227 of the Constitution and further that nomenclature is of no consequence and it is the nature of relief sought and controversy involved which determines as to which Article, whether 226 or 227 of Constitution of India is applicable.

8. Whether a Labour Court is only a court subordinate to High Court or it is treated as a Civil Court is a germane issue to be dealt in this case so as to find out whether the petition filed before the learned Single Judge can be treated to be one under Article 226 or Article 227 of the Constitution of India.

8.1. Article 227 of the Constitution of India deals with appointment and condition of office of the Judges of a High Court. The word expression 'judicial office' used in Article 217(2)(a) of the Constitution of India must be interpreted in consonance with the scheme of Chapter V & VI of Part VI of the Constitution. It means the person who exercise only judicial functions, determines, causes inter parties and renders decisions in a judicial capacity. He must belong to the judicial service which as a class is free from executive control and is disciplined to uphold the dignity, integrity and independence of the judiciary. Going by these tests laid down so as to what constitutes judicial service under Article 236 of the

Constitution. The Labour Court judge can be held to belong to judicial service. The Labour Court have also been subject to the High Court's power of superintendence under Article 227 of the Constitution of India.

8.2 The Hon'ble Apex Court in the case of State of Maharashtra vs. Labour Law Practitioners' Assn.(1998) 2 SCC 688 has held in paragraph 20 as follows :

"20. The constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate courts shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. Thus Article 233 which deals with appointment of District Judges requires that such appointments shall be made by the Governor of the State in consultation with the High Court. Article 233(2) has been interpreted as prescribing that "a person in the service of the Union or the State" can refer only to a person in the judicial service of the Union or the State. Article 234 which deals with recruitment of persons other than District Judges to the judicial service requires that their appointments can be made only in accordance with the Rules framed by the Governor of the State after consultation with the State Public Service Commission and with the High Court. Article 235 provides that the control over district courts and courts subordinate thereto shall be vested in the High Court; and Article 236 defines the expression "District Judge" extensively as covering judges of a City Civil Court etc. as earlier set out, and the expression "judicial service" as meaning a service consisting exclusively of persons intended to fill the post of the District Judge and other civil judicial posts inferior to the post of District Judge. Therefore, bearing in mind the principle of separation of powers and independence of the judiciary, judicial service contemplates a HCJ & MSM,J of 2021 service exclusively of judicial posts in which there will be a hierarchy headed by a District Judge. The High Court has rightly come to the conclusion that the persons presiding over Industrial and Labour Courts would constitute a judicial service so defined. Therefore, the recruitment of Labour Court judges is required to be made in accordance with Article 234 of the Constitution."

(emphasis supplied)

9. The Hon'ble Apex Court in Radhey Shyam vs. Chabbi Nath and Others (2015) 5 SCC 423 observed that a writ petition can lie only under Article 227 of the Constitution of India, orders from the Tribunals can be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both would depend upon the various aspects. There can be orders passed by the learned Single Judge which can be construed as an order under both Articles in a composite manner, or can co-exist and coincide. It was reiterated that it would depend upon the nature and character of the order and it will be the obligation of the Division Bench hearing the intra court appeal to discern and decide whether the order passed by the learned Single Judge in exercise of jurisdiction under

Article 226 or 227 of the Constitution or both. The Bench would also require to scrutinise whether the facts of the case justifies the assertion made in the petition to invoke the jurisdiction under both the Articles and the relief prayed on that foundation.

10. The Hon'ble Apex Court in the case of Caparo Engineering India Ltd. vs. Ummed Singh Lodhi And Anr. Civil Appeal Nos.5829-5830 of 2021 disposed of on 26.10.2021 held in paragraph 7.9 as follows :

"7.9 Now, so far as the submission on behalf of the appellant that the learned Single Judge of the High Court wrongly treated the petition(s) under Article 227 and as such the learned Single Judge ought to have treated the petition(s) under Article 226, therefore, the writ appeal before the learned Single Judge would have been maintainable, is concerned, at the outset, it is required to be noted that before the learned Single Judge in the cause title specifically Article 227 has been mentioned. Even in prayer clause, no writ of certiorari is sought. The prayer is simply to quash and set aside the judgment and award passed by the learned Labour Court and, therefore, in the fact situation, the Division Bench has rightly dismissed the writ appeal as not maintainable. Be that it may, even for the sake of submission, assuming that we accept the submission that the petition before the learned Single Judge ought to have been treated as under Article 226 and writ appeal would have been maintainable, in the facts and circumstances of the case and instead of remanding the matter to the Division Bench to decide the same afresh, we, ourselves, have decided the entire controversy/issues on merits considering the fact that the order of transfer is of 2015 and that most of the employees have by now retired or they are about to retire on attaining the age of superannuation and that it is stated that they are not paid the salaries since 2015. Therefore, we, ourselves, have decided the entire issues on merits. " (emphasis supplied)

11. The Hon'ble Apex Court in Kiran Devi vs. Bihar State Sunni Wakf Board and Others (2021) SCC online SC 280 - AIR 2021 SC 1775 held that "therefore the petition styled as one under Article 226 would not bar the High Court to exercise jurisdiction under the Act and/or under Article 227 of the Constitution. The jurisdiction of the High Court to examine the correctness, legality and propriety of determination of any dispute by the Tribunals is reserved with the High Court. The nomenclature of the proceedings as a petition under Article 226 or a petition under Article 227 is wholly inconsequential and immaterial."

12. In the instant case, the Labour Court, Bengaluru passed an award in favour of the respondent which was assailed before the learned Single Judge invoking jurisdiction under Article 227 of the Constitution of India. The writ petition filed by the petitioner must be held as one under Article 227 of the Constitution of India being a challenge to the judicial order of the Labour Court.

13. Considering the law laid down by the Hon'ble Apex Court and also facts of the present case, without going into the merits of the appeal, we are thus

satisfied that the writ petition being preferred under Articles 226/227 of the Constitution of India challenging the award passed by the Labour Court Bengaluru, the present writ appeal against the order of the learned Single Judge which is an intra court appeal is not maintainable.

12. Accordingly, we proceed to pass the following order :

ORDER

Writ appeal is dismissed as not maintainable.