

(2003) 10 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 44677-44678 of 2003

Management of Loka-Shikshana Trust and Another

APPELLANT

Vs

K. Srirangachar

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 10 (4A), 2 (s)

Citation : (2004) ILR (Kar) 2875

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : K. Sribhoomi Yesaswini, for Kasturi Asst, for the Appellant; H. Neelakanta Rao, for C/R, for the Respondent

Judgement

N. Kumar, J.—Though these matters are listed in preliminary hearing, by consent of both the parties, the matters are taken up for final disposal and disposed of by this order.

2. The respondent joined the services of the petitioner on 17.5.1988 as a workman. From 31.3.1990 he was treated as a permanent employee. On 9.4.1990 he was promoted from the post of printer to the post of supervisor. His services were terminated on 7.11.1996. He was working as Assistant Production Manager. He raised an industrial dispute u/s 10(4A) of the Industrial Disputes Act, 1947, before the II Additional Labour Court, Bangalore. He contended that the domestic enquiry conducted against him was not fair and proper. Even on merits he contended that the misconduct is not proved. The petitioner-management filed the statement of objections contending that the domestic enquiry is fair and proper. Secondly it was contended that the respondent is not a workman and therefore the application is not maintainable. On merits also, they denied all the allegations made by the respondent. In the said proceedings, the respondent filed an application for interim relief. The said application was opposed on two grounds. Firstly on the ground that until and unless the question of validity of domestic enquiry is considered by the Court, the said application

cannot be taken up for consideration. Secondly it was contended that as the respondent is not a workman no relief could be granted by the Court. In view of the objections taken, the Court recorded a finding regarding the validity of domestic enquiry as preliminary issue. After hearing both the parties, the Labour Court held that the domestic enquiry conducted is not fair and proper and set aside the domestic enquiry. It is thereafter the application for grant of interim relief was taken up for consideration. The petitioner reiterated the objections, viz., the respondent is not a workman and unless the said jurisdictional fact is decided by the Labour Court, the labour Court cannot grant the interim relief. It was further submitted that the jurisdiction of the labour Court has to be decided as a preliminary point. The labour Court not considering the aforesaid objections held that though the question whether the respondent is a workman is a jurisdictional point, the said issue could be decided only after recording the evidence. But at this stage from the material on record and from the admitted facts, prima facie, it is satisfied that the respondent is a workman and therefore has proceeded to grant the interim relief to the workman at the rate of Rs. 2,500/- per month from 22.12.1999 till final adjudication by its order dated 16.8.2003 as per Annexure-C. Aggrieved by the said order, the petitioners have preferred these Writ Petitions.

3. Learned Counsel for the petitioners Ms. Sribhoomi assailing the impugned order submitted that the question whether the respondent is a workman or not is a jurisdictional point, unless that jurisdictional point is decided one way or the other, the Labour Court will not get jurisdiction to consider the application for interim relief and grant interim relief. In support of her contention, she relied upon the decision of this Court in the case of RANGASWAMY & CO. v. D.V. JAGADISH 1990 (2) LLN 745 and submitted that as the Labour Court has not recorded the evidence on the said issue and recorded a finding, the impugned order passed is liable to be quashed on that short ground. She also submitted, admittedly, the respondent was working as an Assistant Production Manager and the very designation shows that he is not a workman and therefore, the Labour Court has committed an error in coming to the prima facie conclusion that the respondent is a workman u/s 2(s) of the Industrial Disputes Act.

4. Per contra, Learned Counsel for the respondent contends, against an interim order passed by the Labour Court no relief could be granted by this Court. In support of the said contention he relied on the decision of the Supreme Court in the case of D.P. MAHESWARI v. DELHI ADMINISTRATION AND ORS. AIR 1984 SC 153 and contends that case for interference is not made out. Secondly it was submitted that even though the Court below has not recorded any evidence on this jurisdictional point, from the material on record it has come to a prima facie conclusion that the respondent is a workman and such a finding is sufficient to grant the interim relief. It was further submitted that the respondent was employed as a workman, even though he has been now designed as an Assistant Production Manager and the nature of work which he is performing is that of a workman and therefore mere nomenclature would not make any difference and

cannot take him away from the purview of Section u/s 2(s) of the Industrial Disputes Act. In that view of the matter, he submits that the Court should not interfere with the impugned order passed.

5. In the case of Rangaswamy a Division Bench of this Court dealing with a somewhat similar situation has held as under:

"11. It is necessary to point out that in a case where a reference is made by the State Government u/s 10(1) of the Industrial Disputes Act, the reference itself is sufficient to confer jurisdiction upon the Labour Court or the Industrial Tribunal to decide the matter referred to it and also other matters incidental there to. However, even in such cases also, it is open to challenge that the dispute referred to the Industrial Tribunal or Labour Court is not an industrial dispute.

12. Whenever a question affecting the jurisdiction of an Industrial Tribunal or a Labour Court is raised, it is necessary for the Tribunal or the Labour Court to decide the same. A similar question arose in the case of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, . The Supreme Court held thus:

" If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ."

13. Similarly , in the instant case, the jurisdiction of the Labour Court to decide the dispute depends upon the decision on the question whether the first respondent is a "workman". Therefore, the Labour Court ought to have decided the issue as a preliminary issue if it was required to consider the interim relief sought for by the first respondent. The Supreme Court has not held that an issue touching jurisdiction should not be triad as a preliminary issue.

".....Tribunals and Courts who are requested to decide preliminary questions must, therefore ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences..."

Therefore, we have already pointed out that it would depend upon the facts and circumstances of each case, and the Tribunal or the Court seized of the matter has to decide whether in a given case, the issue raised touching the jurisdiction should be tried as a preliminary issue. In view of this, it is not possible to hold that the Supreme Court in Maheswari (D.P) case (vide supra), has laid down that an issue touching the jurisdiction of an Industrial Tribunal or a Labour Court should nor or need not be tried as a preliminary issue."

In view of the law laid down in the aforesaid judgment, it is clear that the jurisdiction of the Labour Court to decide the question whether an interim relief is to be granted or not to the respondent depends on the question whether the respondent is a workman. Unless the said issue is decided the Labour Court cannot proceed to grant the interim relief.

6. However, in the aforesaid judgment it is made clear that whether the issue raised on the jurisdiction should be tried as a preliminary issue or not is dependent upon the facts and circumstances of each case and the Tribunal or the Court seized of the matter has to decide whether in a given case it is so necessary. In order to give final relief ought for in the said proceedings unless the Court or the Tribunal has the jurisdiction to grant such relief, no such relief could be granted. But in so far as the grant of interim relief is concerned though the interim relief is granted in aid of main relief, the party would be entitled to interim relief if he prima facie makes out a case that the said Court had the jurisdiction to grant the relief. In a given case, even without recording the evidence and deciding the preliminary issue regarding jurisdiction finally, if on the material available on record the Court is prima facie satisfied that the Court has the jurisdiction, it is open to the Court to record the prima facie finding regarding jurisdiction and then proceed to consider the request for interim relief. Otherwise, to deny the interim relief to a workman all that the management has to do is to deny his status as a workman. If the said denial is bonafide and prima facie substantiated from the material on record, the Court can decline to consider the request for grant of interim relief. But the material on record prima facie established that the person seeking the relief is a workman and the denial of the said status by the management is malafide and with the sole object of denying the interim relief to such workman, it is open to the Court to record a prima facie finding on the jurisdictional aspect and then proceed to consider the case for grant of interim relief on merits. Any other interpretation would defeat the very object of granting the interim relief to a workman pending disposal of the dispute on merits before the Labour Court. Therefore, it is not possible to accept the contention that unless the evidence is recorded on the jurisdictional issue and the same is tried as a preliminary issue and a finding is recorded holding that the said tribunal or Labour Court has jurisdiction the Court has no power to consider the application for interim relief. The finding of jurisdictional aspect includes a prima facie findings on the jurisdictional issue which could be recorded as a preliminary finding to enable the Court to consider the application for interim relief on merits. In fact, after laying down the law on the point in the aforesaid judgment the Court granted interim relief to the workman even before the jurisdictional point is decided.

7. In the instant case, admittedly, the respondent joined the services of the petitioner as a workman. Therefore, at the inception his status was that of a workman under the Act. Domestic enquiry was initiated on charges of misconduct on the assumption that he is a workman whose services cannot be terminated without holding a domestic enquiry. The said status is denied on the ground that on the date of termination from services he was working as an Assistant Production Manager and he ceased to be a workman. If really it was so, there was no necessity for the management to hold any domestic enquiry against a person who is not a workman. The workman has asserted notwithstanding the change in the nomenclature, the work which he was carrying on is nevertheless

one and the same. When the application for interim relief was filed it was objected to on the ground that till the domestic enquiry is held to be invalid, the application for interim relief cannot be considered. Accepting the said contention, the Labour Court postponed the consideration of interim relief and held enquiry regarding validity of the domestic enquiry and after such enquiry has recorded a finding that the domestic enquiry held is not valid and proper. When the workman renewed his request for consideration of his application for interim order the petitioner objected to the same, now on the ground that the respondent is not a workman and therefore the Labour Court has no jurisdiction to entertain the dispute. If really the petitioner was serious about this jurisdictional point, the petitioner ought to have requested the Labour Court to decide this jurisdictional point first, and then to consider the question of validity of the domestic enquiry. They have not done so. By leading evidence on the question of domestic enquiry they have submitted to the jurisdiction of the Labour Court and they have tried to support the validity of the domestic enquiry. Under these circumstances, it is too late in the day for the respondent to contend that the Labour Court has no jurisdiction to decide the dispute on merits as according to them the respondent is not a workman under the Act. Therefore, the Labour Court was fully justified in holding under the circumstances that prima facie the respondent is a workman and thereafter was fully justified in considering the application for interim order and granting the relief sought for by him.

8. Under these circumstances, I am of the view that the finding recorded by the Labour Court prima facie, that the respondent is a workman and as that finding is based on the material on record, it is just and reasonable. Therefore, it does not call for any interference. Accordingly, it is dismissed. Consequently, the award of interim relief also does not call for interference.

9. The question whether the respondent is a workman or not has to be decided by the Labour Court after recording of evidence adduced by both the parties. The finding recorded by the Labour Court and this Court at this juncture is only prima facie finding of the question for considering the application for interim relief. The Labour Court shall decide the said question on its merits and in accordance with law without being influenced either by the finding of the Labour Court or by this Court.