
(1978) 10 KL CK 0017
In the High Court Of Kerala

Management of Premier Tyres Limited	APPELLANT
Vs	
T.K. Bhaskaran Nair	RESPONDENT

Date of Decision : 13-10-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1979) 1 ILR (Ker) 181 : (1979) 1 LLJ 302

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; S.K. Kader, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, C.J.—The appeal is by the Management of M/s. Premier Tyres Limited, Kalamassery against the judgment of a learned Judge of this Court quashing Ext. P1 award of the Industrial Tribunal, Calicut and remitting the matter back to the Tribunal for fresh consideration. By the impugned award, the Tribunal dismissed the complaint of the writ petitioner workmen u/s 33A of the Industrial Disputes Act questioning the order of the management transferring him from the company's factory to the sales division. The writ petitioner was a Supervisor (Garden, House keeping and Seraps) in the appellant-company. He was placed under suspension pending enquiry for misconduct. On enquiry, he was found guilty of the charges and was dismissed from the date of suspension. He was at that time, General Secretary of the Premier Tyres Employees Association. The dismissal was the subject-matter of an industrial dispute which was referred to the Industrial Tribunal, Alleppey. By its award dated 16th October, 1971, the Tribunal set aside the dismissal and directed reinstatement of the writ petitioner with back-wages. O.P. No. 5436 of 1971 filed by the management against the award was dismissed by this Court and an appeal therefrom was rejected in limine. The writ petitioner was reinstated on 11th May, 1972. On 23rd May, 1972 he was transferred to the sales department of the company. The transfer according to the writ petitioner had reduced his emoluments and prejudiced his promotional prospects. At the time of the transfer there were two industrial disputes pending; one before the Industrial Tribunal, Calicut, as I.D. No. 3 of 1971 and the other before the Labour Court,

Quilon, as I.D.50 of 1971. I.D.No. 3 of 1971 was disposed of by an award dated 24-3-1973. The application which resulted in the impugned award was filed on the allegation that the conditions of service of the writ petitioner were altered to his disadvantage during the pendency of the two industrial disputes without the permission of the Industrial Tribunal or of the Labour Court. The learned Judge stated that the application was u/s 33A of the Industrial Disputes Act. Indeed, the argument before the learned Judge was that the petitioner is a person connected with the dispute as mentioned in Sections 33(1)(a) and (b) of the Act. The same seems to have been the argument before the Industrial Tribunal also. In paragraph 10 of Ext. P1, the Tribunal noted that the first two demands raised by the writ petitioner were based on the charter of demands submitted by the two unions and the 3rd demand was for bonus for the year 1969. It remarked that the document marked Ext. W. 14, before it, which was a printed copy of the award of the Industrial Tribunal, I.D. 3 of 1971 did not show the issues referred for adjudication. It observed that the writ petitioner-complainant had not chosen to produce the charter of demands which would have shown specifically the subject-matter of the dispute. It observed:

10 ...Ext. W. 14 does not show the issues referred for adjudication. The complainant was at liberty to produce the charter of demands and these charter of demands would have specifically mentioned the issues. He has not done that. The complainant has chosen to produce the preliminary written statement filed by the management in that case. This also does not mention the issues referred. There is no other document before this Court to show what all issues are actually referred for adjudication in I.D. No. 3 of 1971. The bonus for the year 1969 cannot in any way have any effect because the transfer is after the year 1969.

Having made the above observations in paragraph 11, the Tribunal stated that in order to invoke Section 33 of the Act one of the ingredients that had to be shown was that the alteration of the conditions of service of the workmen concerned was in regard to a matter connected with the dispute pending before the Court or the Tribunal. This statement of the position is borne out by Section 33A of the Act read with Section 33(1)(a) and (b). We may re-produce the relevant sections.

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.--Where an employee contravenes the provisions of Section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National workmen till a case for dismissal was made out in the proceedings, (see Tribunal) and on receipt of such complaint that (Labour Court, Tribunal or National Tribunal) shall adjudicate upon the complaint as if it were a dispute to or pending before it in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly.

33. Conditions, of service, etc., to remain unchanged under certain

circumstances during pendency of proceedings--(1) During the appendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice, of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

It is clear that in order to attract Section 33(1)(a) the ingredients inter alia to be proved are: (1) that the matter in respect of which the alteration took place must have been connected with the dispute; and (2) that the workmen in respect of whom the alteration took place must have been concerned with such dispute. It was with respect to the former ingredient that the Tribunal observed that there was nothing to prove the same. When the matter came up before this Court, the learned Judge rightly noticed the contention of the management that the transfer of the writ petitioner was not a matter connected with the dispute and, therefore, the complaint u/s 33A of the Industrial Disputes Act, was not maintainable. But unfortunately the learned Judge did not deal specifically or pointedly with this contention or with this requirement. The learned Judge discussed the question whether the transfer could be said to have altered the conditions of service of the workman. After discussing all the cases, the learned Judge observed:

Therefore, the petitioner was certainly interested in the earlier dispute, as it was a collective dispute on behalf of the workmen in general. In regard to the other question that is, whether the order of transfer was prejudicial to the existing conditions of service of the petitioner, there has not been a proper consideration of the question at all by the Industrial Tribunal. There is really no finding whether the transfer has prejudicially affected the existing conditions of service of the petitioner, even if the standing orders provide that workmen are liable to be transferred from factory at Kalamassery to any other establishments of the company inside or outside the State of Kerala. If such transfer really work out prejudicial to the petitioner and was a sort of victimisation on account of his trade union activities, then certainly such transfer would be violative of Section 33.

Therefore, I set aside Ext. P1 and remit back the matter to the second respondent for fresh consideration in accordance with the law and in the light of what is stated above. The second respondent will dispose of the matter as expeditiously as possible.

There is here neither discussion nor finding as to whether the alteration of the conditions of service was in respect of a matter connected with the dispute. That

is an aspect in regard to which the Tribunal had given a clear and specific finding; and unfortunately, the learned Judge did not advert to this aspect and give a finding one way or the other. Without holding that the Tribunal's finding in respect of this matter was unjustified or improper, the learned Judge should not have quashed the award of the Tribunal. In a recent decision, a Division Bench of this Court in *Thomas v. Industrial Tribunal, Kozhikode* (1978) Labour and Industrial cases p.267--W.A. No. 99 of 1977, had pointed out the ingredients of Section 33(1)(a) which had to be made out before an action can be sustained. We are clearly of the opinion that an essential ingredient to invoke the Section has not been made out and the learned Judge was wrong in interfering with Ext. P1 Award of the Tribunal.

2. Counsel for the writ petitioner-workmen endeavoured before us to make out that the petition filed by him was also u/s 33(2) of the Industrial Disputes Act and that it would be enough for him to make out the ingredients of that Section. We may extract the Section 33(2)(a) and (b)

33(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workmen--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or other wise, that workman.

Provided that no such workmen shall be discharged, or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

There is nothing in Ext. P1 award of for that matter in the judgment of the learned Judge under appeal to show that the writ petitioner's application was u/s 33(2) of the Act. Assuming, without deciding, that it was so, even to make out the ingredients of Section 33(2) it was necessary for the writ petitioner to show that the alteration of the conditions of service was for any misconduct not connected with the dispute. But whether to show that the impugned action was connected with the dispute, or not connected with the dispute, in either case, it was necessary to know the scope of the dispute and the matters referred for adjudication. This, the writ petitioner had not proved before the Tribunal and the Tribunal was right in holding that the necessary ingredients for entitling the writ petitioner to relief had not been established.

3. We think that the learned Judge was wrong in having interfered with Ext. P1

award and quashed the same. We allow this appeal, set aside the judgment of the learned Judge, and direct that O.P. No. 5435 of 1974 will stand dismissed. There will be no order as to costs.