

(1985) 06 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 6287 of 1985

Management of Samyukta Karnataka

APPELLANT

Vs

M.L. Satyanarayana Rao and Another

RESPONDENT

Date of Decision : 26-06-1985

Acts Referred:

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

Citation : (1986) 52 FLR 104 : (1987) ILR (Kar) 40 : (1986) 2 LLJ 72

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. This petition is by the Management of Samyukta Karnataka, daily newspaper praying for quashing the award made by the Labour Court, Bangalore on a reference made under S. 10 of the Industrial Disputes Act read with Sub-s. (2) of S. 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, ("the Act" for short).

2. The facts of the case, in brief, are as follows :- Respondent-1 was a News Agent at Holenarasipura. He was entrusted with the selling of Samyukta Karnataka daily newspaper since 1971. According to the petitioner, respondent 1 was also selling several other newspapers. Respondent-1 was, in addition to being a news agent, appointed as a correspondent of Samyukta Karnataka daily on 12th August, 1971. Respondent-1 made a claim before the petitioner that he should be paid salary in the pay scale of Rs. 315-25-440-804-50-1000 from 12th August, 1971 till 28th February 1979. The total amount of arrears of salary claimed on that basis was Rs. 42,253-50 Ps. The pay scale claimed was the pay scale applicable to a correspondent in accordance with the conditions of service fixed under the provisions of the Act and the Rules framed thereunder. As the request of the 1st respondent was not complied with by the petitioner, he approached the Working Journalists Association requesting it to raise a dispute. The Association, however, asked the petitioner to raise a dispute before the State Government. By an order dated 22nd January, 1979, the State Government

referred the dispute for adjudication to the Labour Court, Bangalore. The points for dispute referred for adjudication were these;

"I. Is the Management justified in denying the status of Correspondent (working Journalist) to Sri M. L. Satyanarayana Rao and the corresponding emoluments as per Wages Board Recommendations applicable to working Journalists, from the date of his appointment i.e., 12th August, 1971 ?

II. If not, to what reliefs Sri Satyanarayana Rao is entitled ?"

Claim statement was filed by the 1st respondent and the objection statement was filed by the petitioner. The Labour Court by its award on 23rd June, 1984 (Annexure-A), gave a declaration that the 1st respondent was a working journalist and therefore, he was entitled to the emoluments prescribed for a correspondent. Aggrieved by the said award the petitioner has presented this petition.

3. Sri Subba Rao, learned Counsel for the petitioner contended that the dispute itself was not maintainable for the reason that dispute was not relating to termination of service which alone would have entitled the 1st respondent to raise a dispute individually under S. 2-A of the I.D. Act and as in the present case, the dispute was relating to conditions of service other than termination of service it was not maintainable. He submitted that the Labour Court had wrongly rejected that contention in the following words :

"Under S. 2-A of the Industrial Disputes Act, any dispute between a workman and the Management is deemed to be an industrial dispute. Consequently, the workman can himself espouse his cause."

and that the view was presently erroneous.

4. The Labour Court, strangely, has overlooked the words in S. 2-A which expressly speak of a dispute arising out of termination of service, whatever be the manner of termination of service, and does not cover every type of dispute between an individual workman and Management, of an Industry. The view is clearly untenable.

5. Sri Padke, learned Counsel for respondent-1 also did not support the above view taken by the Labour Court. He, however, pointed out that there was a special provision under S. 17 of the Act which enabled an individual working journalist to raise a dispute regarding non-payment of salary in accordance with the provisions of the Act and Rules framed thereunder and therefore, the reference made by the State Government was competent under the above provision. S. 17 of the Act reads :

"17. Recovery of money due from an employer -

(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of

his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made of it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-s. (1).

Sub-section (2) of S. 17 certainly incorporates a special remedy for recovery of salary or any other amount due to a working journalist from his employer individually. When an application is made before the State Government in respect of arrears of salary due to a working journalist by him it is open for the State Government to refer the question to any Labour Court constituted under the Industrial Disputes Act. When such reference is made the Labour Court is vested with the jurisdiction to decide that dispute. Therefore, I reject the contention of the petitioner that the dispute between the 1st respondent and the petitioner referred to the Labour Court was without authority of law though for reasons different from the one given by the Labour Court.

6. The learned Counsel for the petitioner submitted that even if sub-s. (2) of S. 17 of the Act provided a special remedy for a working journalist for recovery of salary due to him from his employer, the jurisdiction under the said provision could be exercised only when there is no dispute that the person concerned was a working journalist. The learned Counsel submitted that as in the present case, the petitioner was disputing the status of 1st respondent as a working journalist, the dispute was not maintainable.

7. I am not impressed by the submission. Sub-s. (2) of S. 17 confers power on the State Government to refer a dispute raised by a person on the basis that he was a working journalist regarding salary due to him from his employer and if the State Government is prima facie satisfied that the matter merits reference under the said provision it has the power to make a reference. Therefore, it should be held that the Labour Court which is vested with the power to decide such dispute has also the power to decide all incidental questions necessary for the exercise of the power. Acceptance of the plea of the petitioner would render

S. 17(2) purposeless for, in every case, if the Management concerned were to raise an objection that the claimant concerned was not a working journalist, the Labour Court would have no jurisdiction to decide the issue. Therefore, I hold that in a reference made under S. 17(2) of the Act read with S. 10(1) of the I.D. Act, the Labour Court has the jurisdiction to decide the question as to whether the claimant was a working journalist if such a question is raised on behalf of the Management.

8. The learned Counsel for the petitioner next contended that unless a finding was recorded to the effect that the 1st respondent was a working journalist as defined under S. 2(f) of the Act, the Labour Court could not have given a declaration that the 1st respondent was working journalist.

9. In support of the above contention, the learned Counsel submitted as follows :- The 1st respondent was a news agent in that his business consisted of selling newspapers. He was selling not only Samyukta Karnataka but also several other newspapers. In addition to that he was also authorised to send news items on condition that payment would be made according to prevailing schedule of rates. His principal avocation was not that of a journalist. Unless a specific issue was framed and a finding was recorded by the Labour Court to the effect that the principal avocation of the first respondent was that of correspondent, the declaration could not have granted by the Labour Court.

10. Sri Padke, learned Counsel for respondent-1 made a scathing attack against the stand taken by the Management, in its objections statement and in the writ petition, he submitted as follows. Though the Management itself had in writing appointed the 1st respondent as a correspondent by order dated 12th August, 1971 (Annexure-Q) the Management in its objection statement to the claim statement of respondent-1, went to the extent of saying that the 1st respondent was never appointed as a correspondent and that the same inaccurate statement has also been made even in this petition.

11. The order of appointment dated 15th August, 1971 reads :

Samyukta Karnataka Exceeds 36 years of service : Hubli - Bangalore Sole Trustee : Head Office : R. R. Diwakar Koppikar Road, 2 Residency Secretary : P.O. Box. No. 30, Road, Bangalore-25, A. R. Diwakar Hubli Ed/- Shri M. L. Sathyanarayana Rao, Agent, Samyukta Karnatak, Holenarasipur.

Sir,

With reference to your letter of August 12, 1971, requesting us to appoint you as our correspondent also at Holenarasipur, we are pleased to authorise you as our correspondent with immediate effect. You may begin to send the news of your place regularly hereafter. The Telegraph bearing authority will be sent in due course. In the meantime, you may send news by post only.

Payment will be made on column basis at our scheduled rates. This is for your information.

Thanking you,

Sd/- B. G. Guttal, Manager-in-charge of Editorial Administration." (Italics by me) Yours sincerely,

The issue of the above appointment order to respondent-1 could not and is not controverted by the learned Counsel for the Management. It is true as pointed by respondent-1 in the objection statement filed to the claim statement of respondent-1 before the Labour Court the Management had at more than one place proceeded to state that the 1st respondent was never a correspondent of Samyukta Karnataka. Therefore, the criticism made by the learned Counsel for respondent-1 against the Management that it had made inaccurate statement even regarding the appointment of respondent-1 as correspondent, is well founded.

12. Sri Subba Rao, learned Counsel for the Management however, tried to explain the inaccurate averment by submitting that when the Management state that respondent-1 was not a correspondent, it only meant that he was not a full time correspondent or that the principal avocation of respondent-1 was not that of a Correspondent. The explanation, in my opinion, is not satisfactory. In the face of the contents of appointment order the petitioner could not have stated that the 1st respondent was not a correspondent. On a reading of the counter statement as also the additional counter statement I am convinced that unnecessary lengthy pleadings have been filed on behalf of the Management instead of making it brief and meaningful by stating that though respondent-1 had been authorised to be a correspondent, the principal avocation of respondent-1 was not that of correspondent. In the additional objection statement the management, no doubt has specifically stated that the principal avocation of the 1st respondent was that of selling newspaper and not that of working journalist. That, one specific statement was sufficient on behalf of the petitioner instead of a lengthy pleading minus that crucial statement, as had been done in the main objection statement.

13. Whatever that may be notwithstanding the indiscretion committed by the Management in filing lengthy objection statement which contained several inaccurate statements, the fact remains that the main issue that was required to be framed and answered by the Labour Court was, whether the principal avocation of respondent-1 was that of a correspondent, so that he came within the description of the word "working journalist" as defined in S. 2(f) of the Act.

14. It is common ground that in order that a "correspondent" falls under the definition "working journalist" his principal avocation must be that of a correspondent. In the present case, the order of appointment produced by the 1st respondent discloses that he had been appointed as correspondent of Samyukta Karnataka at Holenarasipur. But, by that itself, he would not be entitled to secure a declaration that he was a working journalist. He had to prove by evidence that his principal avocation was that of a correspondent. The Labour

Court in paragraph-7 of its order started the discussion" of this question by referring to the definition of the "working journalist" in the Act and noted that only such a person could be regarded as a working journalist if his principal avocation was that of any one of the description set out in the definition. But, while concluding, the Labour Court equated correspondent to that of a working journalist forgetting the criteria that his principal avocation must be that of a correspondent. Therefore, in my opinion, the order of the Labour Court has to be set aside with a direction to the Labour Court to frame a specific issue as indicated earlier and proceed to record a finding on the basis of the evidence on record.

15. Before concluding, it is necessary to refer to another objection raised by the petitioner namely that the Management of Samyukta Karnataka was not properly made a second party to the dispute. To the dispute, three persons have been impleaded as respondents. One of them is the Official Receiver, Lokashikshana Trust the second respondent. It is not disputed by the learned counsel for the petitioner that the management of Samyukta Karnataka newspaper, is now vested in the Official Receiver appointed by this Court. In fact, this writ petition itself is presented by the management of Samyukta Karnataka represented by the Court Receiver. Therefore, so long the Court Receiver of Samyukta Karnataka is made a party respondent to the dispute, the contention that the management is not properly impleaded as a second party to the reference is untenable.

16. In the result, I make the following :

ORDER

(i) The writ petition is allowed;

(ii) The impugned award of the Labour Court is set aside. The Labour Court is directed to frame an additional issue namely "Whether the principal avocation of the first party workman was that of a correspondent of Samyukta Karnataka ?" and proceed to decide the issue in accordance with law.

(iii) Both the parties shall be at liberty to adduce additional evidence.

(iv) The Labour Court is directed to take up the case on the top priority basis and dispose of the same most expeditiously.