

(2000) 09 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No. 1634 of 2000

Management of Welcomegroup Windsor Manor Sheraton and
Towers

APPELLANT

Vs

M.S. Subbaiah

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Industrial Disputes Act, 1947 — Section 10 (1) (c), 11, 17 A, 20

Citation : (2001) 89 FLR 736 : (2001) 1 LLJ 1182

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Kasturi and Prabhakara Rao, for Kasturi Associates, for the Appellant; T. Narayanaswamy, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chinnappa, J.—The respondent was an employee of the petitioner which is a hotel industry. He raised an industrial dispute against the petitioner in Reference No. 170/1987 u/s 10(1)(c) of the Industrial Disputes Act (for short "the Act") alleging that his services were terminated w.e.f. September 18, 1985. The parties appeared before the Labour Court, Bangalore, and filed their respective claim and counter statements. Consequently, the Labour Court framed issues and treated the question of fairness of the domestic enquiry as a preliminary issue. In support of their case, the petitioner examined one witness on the issue of validity of the domestic enquiry. However, the respondent examined himself and two witnesses both in regard to the validity of the domestic enquiry and also the settlement dated April 1, 1986, However, both the parties addressed arguments on the issue of validity of domestic enquiry. When the matter was posted for further arguments on October 7, 1998, the petitioner counsel realising the mistake that he had not cross-examined the respondent on the question of fairness and legality of the domestic enquiry, made an application u/s 11 r/w Section 151 of the C.P.C. along with the memorandum of facts stating that WW1

was not cross-examined on the issue of validity of domestic enquiry and requested the Court to recall the respondent for further cross-examination. The respondent herein filed objections resisting the application filed by the petitioner which are at Annexures B & A respectively in this petition. On October 20, 1998, the matter was heard on the said I. A. by the Labour Court and reserved for orders on I.A. Thereafter, the matter was adjourned from time to time for passing orders i.e. on November 7, 1998, December 15, 1998, January 8, 1999 and February 1, 1999. In support of this, the copy of the order sheet is produced at Annexure C. On February 2, 1999 the Labour Court instead of passing orders on I.A. dated October 17, 1998 to recall the respondent for cross-examination, passed the order on the preliminary issue, i.e. on the issue of validity of domestic enquiry holding that the domestic enquiry held against the respondent is not valid and proper as per Annexure D. Subsequently on March 10, 1999 when the matter was set down for evidence on merits after setting aside the domestic enquiry by the Labour Court, the counsel for the petitioner filed yet again an I.A. u/s 11 r/w Section 151 C.P.C., praying the Labour Court to recall the order dated February 2, 1999 and also for permission to recall WW1 for cross-examination on the issue of validity of domestic enquiry. A copy of the application and also the objection statement by the respondent is filed as per Annexures E & F. After hearing the arguments, the Labour Court rejected the application filed by the petitioner dated March 10, 1999 vide order dated August 16, 1999, confirming the earlier order of the Labour Court on the issue of validity of domestic enquiry passed by the previous officer dated February 2, 1999. A copy of the order dated August 16, 1999 is as per Annexure G. Being aggrieved by this order dated February 2, 1999 and August 16, 1999 the petitioner filed this writ petition.

2. Heard the learned counsel appearing for the respective parties.

3. The learned counsel for the petitioner submitted that it is a mistake committed by the Court in view of the fact that without disposing of the I.A. filed by the petitioner to recall the respondent for further cross-examination on the validity of the domestic enquiry, has passed orders on the domestic enquiry itself, thereby denying an opportunity to the petitioner to cross-examine the respondent. It is a bona fide mistake on the part of the Labour Court which ought to have been corrected in view of the subsequent application filed by the petitioner to recall the order holding that the domestic enquiry was not fair and proper and should have allowed the application to recall the respondent with a view to give an opportunity to cross-examine.

4. Repelling this argument, the learned counsel for the respondent submitted that the question of recalling the order already passed by the Labour Court does not arise as the Court has no reviewing power under the Act. While emphasising this argument, he also submitted that Section 11 of the Act also does not provide power or jurisdiction to the Court to recall its order. He submitted that even otherwise also no prejudice would be caused to the petitioner as he would be entitled to lead further evidence to establish that the action taken by it in

terminating the services of the respondent is valid. In support of his argument, he placed reliance on a decision reported in *Karnataka Dairy Development Corporation Ltd. v. The Presiding Officer*, II Addl. Labour Court and Anr. 1988 (1) Kar. L.J. 22 wherein it is held that preliminary finding by Labour Court as to the validity of domestic enquiry even if it was erroneous, does not alter its character of being a preliminary finding. Writ petition at that stage if premature, was open to the Management to challenge both preliminary and final finding after award is made.

5. In *D.P. Maheshwari Vs. Delhi Administration and Others*, , their Lordships have held that Articles 226 and 136 are not meant to be used to protect the resistance of workmen. Tribunals and Courts who are required 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.

6. The Division Bench of this Court in *M/s. Senapathy Whitelay Limited, Ramanagaram Vs. Puttaswamy and others*, had deprecated the practice of Labour Court permitting raising of preliminary issues in industrial disputes as it would defeat the very purpose for which the Act was enacted. According to the Court, all the issues are required to be decided at one and the same time.

7. In *State Bank of India Vs. K.B. Raju and Another*, a single Bench of this Court has upheld the order of the Tribunal wherein an application for review of the order of rejection producing the original (primary evidence) was filed. The Tribunal had held that it has no jurisdiction to entertain such an application.

8. In *Karnataka Electronics v. Addl. Labour Court, Bangalore*, & Anr. W.P. 24339/1998 dated August 20, 1998, the, question before this Court was as to whether the employer had the right to challenge the finding on the preliminary issue. This Court after considering all the materials held that in any event in view of the safeguard provided by the statute, no prejudice could be said to have been suffered by the employer if the domestic enquiry was set aside and the Management was called upon to lead evidence and accordingly the petition of the management was dismissed.

8. From these decisions, it is abundantly clear that the Courts have deprecated the practice of questioning the orders passed on preliminary issues. On the other hand, the very object of the Act is to provide a speedy and efficacious remedy to the parties. As far as these principles enunciated by the Courts referred to above, there is absolutely no quarrel but the question in this petition is whether the Labour Court was justified in rejecting the application of the petitioner when the mistake was only due to an inadvertent order passed by the Labour Court. It is the duty of the Court to rectify its defects without any hesitation. It is not in dispute that both the parties wanted the Labour Court to give a finding in regard to domestic enquiry. In view of that understanding, the parties have also let in evidence as indicated above. The petitioner's counsel realised his mistake in not

cross-examining the respondent on the question of legality and fairness of the domestic enquiry. Therefore, he immediately made an application before the arguments were concluded requesting the Court to recall the respondent for further cross-examination. The objection statement was also filed and arguments were heard by the Labour-Court. In actual fact, the Labour Court posted the case to pass orders on this I.A. to recall the respondent, but by inadvertence or so, the Court instead of passing the order on this I.A., passed the orders on the legality and fairness of the domestic enquiry holding that the domestic enquiry was not fair and proper. Under those circumstances, as it was the mistake of the Court, the petitioner made this application to recall that order. It is no doubt true that the Labour Court has no inherent jurisdiction or any provision is incorporated in the Act to review its own order. It is also true, unless there is a provision to review its order, the Court or Tribunal has no jurisdiction to review the said order but in this case, the petitioner has not sought for reviewing the order. On the other hand, to recall that order due to a bona fide mistake which had crept in, in passing the order by the Court. In other words, the petitioner did not have an opportunity to cross-examine the respondent on the important question involved in that petition. Under those circumstances, the Court should have passed an order to recall its own order to straighten the records of the Court.

9. In similar circumstances, Their Lordships of the Supreme Court in *Surjit Singh and others Vs. Union of India and others*, have held:

"The Tribunal has wrongly stated that if they commit mistake, it is for the Supreme Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. When a patent error is brought to the notice of the Tribunal, the Tribunal is duty-bound to correct with grace its mistake of law, by way of review of its order/directions."

10. In yet another decision of the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, , it is held while discussing Sections 10, 11, 17-A & 20 regarding setting aside of ex parte award, the Court held at pp. 327, 328, 329 of LLJ:

"6. It is true there is no express provision in the Act or Rules giving the Tribunal jurisdiction to set aside an ex parte award. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary, There is no statutory prohibition. On the other hand, there are indications to the contrary.

7. The words "shall follow such procedure as the arbitrator or other authority may think fit", in Section 11(1), are of the widest amplitude and confer ample

powers upon the Tribunal and other authorities, to devise such procedure as the justice of the case demands."

11. From the above discussion, it is abundantly clear that it is not even the mistake of the parties. On the other hand, it is the mistake of the Court. Such mistakes will have to be corrected notwithstanding the fact that there is no provision in the statute but, in view of the guidelines of the Supreme Court referred to above, it is the duty of the Court to make the records straight. When the parties have understood their case and submitted arguments in connection with the I.A. filed by the petitioner, the Court without passing any order on I.A. which would have gone to the very root of this particular finding of the Court in regard to the validity and fairness of the domestic enquiry, passed an order on the domestic enquiry itself. Thus, it is clear that it is the mistake of the Court which requires to be rectified. Under these circumstances, I hold that the petition deserves to be allowed giving opportunity to the petitioner to cross-examine the respondent as sought for in the application. Consequently, order dated February 2, 1999 as per Annexure D also is liable to be set aside, lest the very purpose of setting aside the order dated August 16, 1999 would be frustrated.

12. It is no doubt true that some inconvenience is caused to the respondent due to the lapse on the part of the petitioner in not cross-examining him when he was examined before Court and that can be compensated by awarding costs. Under these extraordinary circumstances, to hold that the petition deserves to be allowed.

13. In the result therefore, I proceed to pass the following:

ORDER

The writ petition is allowed.

Order dated August 16, 1999 as per Annexure G is set aside. Consequently, order dated February 2, 1999 as per Annexure D also is set aside, subject to payment of costs of Rs. 1,000/- to the respondent.

The Labour Court to give full opportunity to the petitioner to cross-examine the respondent as sought for in the application and thereafter to pass orders in accordance with law, in the light of the observations made above.