
(1989) 09 MP CK 0061
In the Madhya Pradesh High Court
Case No : M.P. No. 668 of 1989

M.P. State Road Transport Corporation	APPELLANT
Vs	
Virendra Singh Yadav and others	RESPONDENT

Date of Decision : 11-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 61, 62

Citation : (1990) JLI 66

Hon'ble Judges : S.K. Dubey, J;K.K. Varma, J

Bench : Division Bench

Advocate : Akhil Kumar Shrivastava, for the Appellant; K.S. Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—The employer, M.P. State Road Transport Corporation, has preferred this petition under Articles 226 and 227 of the Constitution of India, for quashing the order dated 16-1-1989 (Annexure P-10) of Labour Court, and order dated 15 3-1989 (Annexure P-13) passed by Industrial Court, granting interim relief to the employee respondent No. 1, whereby the employer/petitioner has been restrained from detaining the respondent-conductor from duty and to send him on duty on routes.

2. Brief facts, leading to this petition are: The respondent No 1, a conductor, employee of the petitioner/corporation, was on duty on 8-10 1984 on Syonda-Behat-Gwalior route. Flying-Squad, on checking of the bus ground 19 passengers travelling without tickets. After report, a departmental enquiry was initiated against the respondent No. 1, on the charges levelled vide Annexures P-1 and P-2. The respondent No. 1 challenged the action of issuance of charge-sheets before the Labour Court and prayed for an interim relief, which the Labour Court did not allow. Thereafter, the employee again filed another application u/s 31 read with sections 61 and 62 of the M.P. Industrial Relations Act, 1960 (for short,

"the Act") seeking a declaration that the action of the employer in detaining him is illegal. In these proceedings, an application u/s 107 of the Act was filed for an interim injunction on the allegation that the employee is suffering an estimated loss of overtime and bonus and night halt-allowance amounting to Rs. 400/- per month. This application was opposed. However, the Labour Court vide its order dated 16-1-1989 (Annexure P-10) granted interim relief and stayed the detention order.

3. Aggrieved of this order, the employer/petitioner filed a petition u/s 67 of the Act before the Industrial Court. The Industrial Court vide Annexure P-13 dismissed the petition holding that under the provisions of the Act the Labour Court under certain circumstances has power to reinstate a dismissed employee, during the pendency of a case, before it, hence, the Court has also powers to grant an interim injunction staying the detention order.

4. Shri A.K. Shrivastava, learned counsel for the petitioner, contended, that by granting the interim relief the Labour Court has on a petition u/s 107 of the Act, virtually granted the whole relief without trying the case and thus acted illegally and exceeded the limits of its jurisdiction. Learned counsel further submitted that the respondent No. 1 admittedly is in the employment of the petitioner, and is being paid his salary. He is not sent on duty, because of the disciplinary action pending against him; which is an internal affair of the management touching the discipline. It is not a case where the employee is suffering irreparable loss, which could not be compensated in terms of money. The learned counsel urged that the balance of convenience was also not in favour of the employee. In support of his contentions, the learned counsel for the petitioner placed reliance on Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, , Shyam Lal Yadav and Others Vs. Smt. Kusum Dhawan and Others, , S.L. Namdeo v. Chancellor, JNKV 1587 JLI 230 (DB), Durg Transport Co. v. R.T.A. Raipur 1965 JLI 583, and Hindustan Steel Ltd. Bhilai v. District Judge, Durg 1978 JLI 645.

5. On the other hand, Shri K.S. Shrivastava, learned Counsel for the respondent No. 1/employee contended that the order passed is an interlocutory order hence this Court in its extra ordinary jurisdiction under Art. 226 or under supervisory powers under Art. 227 of the Constitution will not interfere. Learned counsel submitted that the employer is bound to take work from a public servant serving under it; not giving an employee posting and not taking work commensurate to his status is not proper. Shri Shrivastava also submitted that in industrial disputes when an award is passed by the Industrial Court, ordinarily the award is not interfered by picking faults here and there on trivial grounds, frustrating the entire adjudication process on hyper-technical grounds. Shri K.S. Shrivastava placed reliance on Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, , P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, , Mohd. Yunus Vs. Mohd. Mustaqim and Others, , and Ram Sahai v. S.I.

Court 1973 J LJ 25.

6. Ordinarily, a writ Court does not interfere with the interim orders passed by the Tribunals, but, where while granting or refusing an order of injunction or stay or interim relief, the Tribunal acts against the settled legal principles and in contravention thereof, passes orders in an arbitrary manner against the provisions of law, certainly High Court can always exercise its powers under Art. 227 of the Constitution, as the power of superintendence is not restricted only to the cases where non-exercise or illegal exercise of jurisdiction is involved, but it also extends to cases where there has been obvious miscarriage of justice because a Court or Tribunal has approached the matter entrusted to it in an arbitrary manner resulting in miscarriage of justice to a party. It is the duty of this Court acting in exercise of superintendence powers under Article 227 of the Constitution to see that the inferior Court or Tribunal functions within the limits of its authority, and wherever it is found that the Court or the Tribunal has acted beyond its limit or authority and the order passed by it is arbitrary and unjustified, this Court cannot refuse to entertain the petition merely on the ground that the order passed is an interim order.

7. Coming to the contentions urged on merits, the application for interim relief was filed u/s 107 of the Act, which reads as under :

107. Powers of Board. Industrial Court, etc., to pass interim orders.?In any proceedings before it under this Act, a Board, the Industrial Court or a Labour Court may pass such interim orders including a prohibitory order or a stay order as it may consider just and proper.

The object of the interlocutory injunction is to protect a party against an injury or violation of his legal right. It cannot be disputed that a Labour Court while exercising powers u/s 107 of the Act, must find three pillars, i.e., prima facie case, irreparable injury and balance of convenience. Therefore, a Labour Court must not only find that there is a prima facie case in favour of the petitioner, but must take into account irreparable injury that is likely to be caused and also has to consider balance of convenience, if any of the three ingredients is missing, the Labour Court will stay its hands in passing the order. For a prima facie case, the Court must not only be satisfied that the claim is not superfluous or vexatious but has to see that there is a serious question to be tried. After finding that there is a prima facie case, the Court has to consider whether the party seeking extraordinary relief of injunction could be compensated in terms of money. So far as the doctrine of relative or comparative injury is concerned it rests upon particular or peculiar circumstances of each case. Thirdly, the Court has to consider whether balance of convenience lies in favour of a party in granting the injunction or in favour of the opposite party by its refusal. The extraordinary nature of the remedy by injunction calls for careful application of this guiding principle and it can safely be said that rarely injunctive relief will be granted, when it operates inequitably or to control the real justice of the case, in case of employer and employee whether it affects discipline. Besides, there are host of

considerations, and one of them is that while granting interim relief, the whole relief is not granted without enquiry or trial of the case.

8. Keeping in mind the above considerations, if we look to facts of the present case, a bare reading of the employee's application shows that he sought a declaration to the effect that his detention be declared as null and void, and during the pendency of the application he claimed interim relief u/s 107 of the Act. The Labour Court without applying its mind and without going into the questions of prima facie case, balance of convenience, irreparable loss and the possibility of compensating him in terms of money, granted the interim relief by the impugned order. The Industrial Court too committed the same error. Both the Courts, in our opinion, failed to consider that there was a departmental disciplinary enquiry pending against the respondent and that detention is an internal affair of the management relating to discipline. Both the Courts also did not go into the question if injunction is granted, it will not be in the interest of discipline or that it will affect smooth functioning of the administration or internal affairs of the management. It is well settled that in a matter touching either the discipline or the administration of the internal affairs or management of the institution against employees, Court should be most reluctant to interfere. (See *V.S. Vishwavidyalaya v. Rajkishore* (supra); *Shyamlal Yadav v. Kusum Dhavian* (supra); and *S.L. Namdeo v. Chancellor, JNKV* (supra)).

9. The Apex Court while considering an industrial dispute u/s 33, 33-A of the Industrial Disputes Act, 1947, in case of *Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another*, observed that when a Tribunal is considering a complaint u/s 33-A and it has finally to decide whether an employee should be reinstated or not, it is not open to the Tribunal to order reinstatement or full wages in case the employer did not take back the workman in his service, as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal. Same view was taken by a Division Bench of this Court in *(M.P.S.R.T. Corporation v. Lavkush Tiwari)* MP No. 342/82; decided on 25-3-1982. The Apex Court in case of *Assistant Collector, C.E. Chandan Nagar* (supra) also deprecated the practice of granting interim order which practically gives the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations.

10. There is no irreparable loss to respondent No. 1, as the respondent No. 1 is in employment and getting his regular salary. The estimated loss is Rs. 400/- per month because of his detention, he can adequately be compensated in terms of money in the action at the conclusion of the trial, if the action is resolved in his favour.

11. In view of the above discussion, we find that the Labour Court granted interim relief mechanically and the Industrial Court affirmed the order on a consideration that the Labour Court has under the other provisions of the Act

power to reinstate the employee by an interim order. It is not such a case nor the employee invoked the powers of the Courts below under sections 83 and 84 and other provisions of the Act, where considerations are entirely different; therefore, he could not have been, under the facts and circumstances of the case, granted the impugned interim relief. As such, both the orders (Annexures P-10 and P-13) cannot be sustained.

12. The decisions of the Apex Court relied on by Shri K.S. Shrivastava have no application in the present facts of the case. In case of Calcutta Port Shramik Union (supra), the Apex Court, while considering a case under the Industrial Disputes Act, 1947, which was finally adjudicated upon, observed that object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In that reference the Apex Court observed that attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds. The other case of the Apex Court in P.K. Chinnasamy v. Govt. of Tamil Nadu (supra) relates to a Government employee, which has no application to the facts of the present case.

13. Therefore, in the facts of the case, we are of the opinion that the learned Labour Court as well as the Industrial Court exceeded their limits of jurisdiction in granting interim relief, hence, the orders passed by the Courts below deserve to be quashed and are hereby quashed. In the circumstances of the case, we direct the Labour Court to dispose of the main application of the respondent No. 1 within 3 months from today.

14. In the result, the petition is allowed with no order as to costs.