
(1996) 02 MP CK 0041

In the Madhya Pradesh High Court

Case No : Writ Petition No. 333 of 1995

Mukherjee P.K. and Others

APPELLANT

Vs

Industrial Court and Others

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Trade Unions Act, 1926 — Section 21A, 28

Citation : (1998) 3 LLJ 1112

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Advocate : N.S. Kale, for the Appellant; Ravindra Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Singh, J.—In this writ Petition, the petitioners have challenged the propriety of the order dated January 13, 1995 passed by the Industrial Court, Raipur, rejecting the application of the petitioners u/s 28(j) of the Trade Unions Act for a declaration/that Respondent Nos. 2 and 3 have ceased to be the office bearers of Bharat Aluminium Mazdoor Sangh (hereinafter referred to as BAMS) on account of their promotion in the (executive cadre, as contained in Annexure-P/7.

2. The BAMS is a recognised representation union of Bharat Aluminium Company Ltd. (hereinafter referred to as BALCO) and is governed by its Constitution. The office bearers of BAMS are elected under clause 13.1 of the Constitution for a period of three years. In the election of office bearers of BAMS held on May 12, 1991, Respondent No.2 was elected as Senior Secretary, whilst Respondent No. 3 was elected as Senior Vice President.

3. On September 16, 1993 the Respondent Nos. 2 and 3 were promoted from Supervisor to Technical Officer in executive cadre with effect from April 1, 1993 and continued to hold the office of General Secretary and Vice President of BAMS. On November 9, 1993, a meeting of the General Council of BAMS was

convened under Clause 12.3 read with Clause 12.4 of the Constitution of BAMS, at the instance of 75 members, which was attended by 137 out of 46 members of the General Council, besides about 100 others and it was unanimously resolved that Respondents 2 and 3 had ceased to be lawful office bearers of the BAMS and the work of Respondent No. 2 would be looked after by the Deputy General Secretary, Shri. P.K. Mukherjee. Petitioner No. 1, and one Senior Vice President will look after the work of Respondent No. 3, until fresh elections are held. This resolution of the General Council with regard to the change in the office bearers was communicated to the Registrar of Trade Unions in Form E.

4. The Sangh Pramukh, however, by his letter dated November 17, 1993 set at naught the resolution passed by the General Council dated November 9, 1993. The petitioners then made an application to the respondent Industrial Court Raipur u/s 28(j) of the Trade Unions Act for a declaration that the Respondents 2 and 3 had ceased to be the office bearers of BAMS. The Industrial Court rejected the application by order as contained in Annexure - P/7, holding that the Respondents 2 and 3 are employees within the definition of Section 2(13) of the M.P. Industrial Relations Act and are entitled to continue on their post until fresh elections.

5. Shri N.S. Kale, learned counsel for the petitioners, has contended that the Respondents 2 and 3 are no doubt employees of BALCO but they have ceased to be workmen on their promotion in the executive cadre; the BAMS is union of the workmen of the BALCO and not the union of the employees of the BALCO; a wrong test was applied by the respondent Industrial Court in resolving the dispute; therefore, the findings of the Industrial Court are vitiated and the impugned order as contained in Annexure - P/7 deserves to be set aside under Article 226/227 of the Constitution.

6. The contentions of Shri Kale are note well-founded, firstly because the Respondents 2 and 3 have not incurred any disqualification from being members of the executive or any other office of the BAMS as contemplated u/s 21A of the Trade Unions Act; secondly, under the Constitution of the BAMS there is no prohibition that the office bearers of the BAMS shall cease to be lawful office bearers on their promotion to the executive cadre; and thirdly, as per the Constitution of the BAMS and Section 22 of the Indian Trade Unions Act, 1926 even outsiders can be elected office bearers and by virtue of the Constitution of the BAMS one Tara Singh Viyogi, who is not a workman of BALCO, is the President of the BAMS, The contention of Shri Kale that the Respondents 2 and 3 on their promotion in the executive cadre have ceased to be workmen and lawful office bearers of BAMS is fallacious and cannot be sustained.

7. Shri Ravindra Shrivastava, learned counsel for the Respondents 2 and 3, however, contended that neither the petition filed by the petitioners before the Industrial Court u/s 28(j) of the Trade Unions (M.P. Amendment) Act nor the instant Writ Petition is maintainable; merely designating a workman as an officer does not change the nature of work. It is obvious from the promotion order of

the Respondents 2 and 3, as contained in Annexure-P / 2, that they were upgraded in the executive cadre as Technical Officers, besides performing their existing job; the Respondents 2 and 3 are basically performing the same supervisory (sic.) the designation of an employee is not of much importance; what is important is the nature of the duties performed by the employee; the determinative factor is the main duties performed by the employee concerned and some work incidentally done. He also placed reliance in the case of S.K. Mani v. Corona Sahu Company Ltd. and Ors. (1994 II LLJ 153), wherein the Apex Court observed :

"If the employee is mainly doing supervisory work but incidentally or for the fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory work. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of "workman" as defined in Section 2(s) of the Industrial Disputes Act".

8. As regards the dispute raised by the petitioners before the Industrial Court u/s 28(j) of the Trade Unions (M.P. Amendment) Act, 1963, Section 28(j) provides that the dispute as to officer of registered Trade Union can be raised by any person claiming to be such an officer or the Registrar.

9. The Petitioners have not been elected to the post held by the Respondents 2 and 3. They have been rather expelled from the primary membership of the BAMS vide resolution dated October 23, 1994 passed by the Central Council of the BAMS. The petitioner have, therefore, no locus standi to approach this Court in writ jurisdiction for quashing the impugned order.

10. It is settled that where a Tribunal has Jurisdiction under any valid law, its omission to refer to that law or its reference to a wrong statute or to an irrelevant provision of the right statute will not render its decision without jurisdiction.

11. It is also settled that in exercising the supervisory jurisdiction under Article 227, the Court does not act as a Court of appeal over the Tribunal or quasi-judicial authority. It will not review or re-weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct error of law in the decision. The power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority.

12. For the reasons mentioned above, there is no merit in this petition. It is accordingly dismissed with costs of Rs. 1000.