

(1964) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1411 of 1963

Municipalities S. Singareni Collieries Co. Ltd., Kothagudem

APPELLANT

Vs

The Industrial Tribunal, Andhra Pradesh, Hyderabad and
Another

RESPONDENT

Date of Decision : 16-11-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1), 33A

Citation : AIR 1965 AP 405 : (1965) 11 FLR 59

Hon'ble Judges : Gopala Krishnan Nair, J

Bench : Single Bench

Advocate : P. Sitapathi and P. Ramachandrarao, for the Appellant; P. Nageshwara Rao, for Govt. Pleader and K. Satyanarayana, for the Respondent

Judgement

(1) The petitioner is a public limited company called the Singareni Collieries Company Limited. This company represented by its Managing Director has filed the present writ petition under Article 226 asking the order dated 21-10-1963 passed by the Industrial Tribunal, Hyderabad in M. P. No. 36/ 63 in I. D. No. 15/ 63 to be quashed. The salient facts are as follows :

The petitioner-company is a large mining concern more than 30,000 workmen. One workman called Ramaswami Naidu, a Canteen Mazdoor working as a cook in the Ramagundam division of the petitioner-company, was discharged by the management on the ground that he had not satisfactorily completed his probation. The workman claimed that he had completed his probation and that he must be considered to be a permanent workman, and dealt with on that basis under the standing orders of the Company.

This claim eventually led to a reference being made to the Industrial Tribunal Hyderabad u/s 10 of the Industrial Disputes Act (hereinafter referred to as the Act). Pending this reference, the second respondent was dismissed by the management on 22-7-1963 on the ground of misconduct. The misconduct lay in the alleged theft by the second respondent of brass ring and iron bushes from

the M. E. D. workshop of the petitioner company at Kothagudem. The second respondent was employed in the Mechanical Engineering division as a first grade turner, that is, as a technician.

On 29-8-1962 and on 29-9-1962, charges were served on him for the theft of the brass ring and iron bushes respectively. He submitted his explanations on 1-9-1962 and on 30-9-1962 respectively. An enquiry was held by the Junior Personnel Manager of the Company and the second respondent was found guilty of the charges of theft. On 22-7-1963 the second respondent was dismissed from the service of the company. Thereafter, on 28-8-1963, he filed a petition M. P. No. 36/ 63 before the Industrial Tribunal under S. 33-A of the Act. The management raised a preliminary objection that the second respondent was not entitled to claim the benefit of section 33-A because he was not "workman concerned" in the pending industrial dispute and also because he was not dismissed for any misconduct "connected with that dispute". But the Industrial Tribunal did not agree with this contention. It therefore overruled it and by its order dated 21-10-1963 directed the second respondent to be reinstated in the petitioner's service. This is the impugned order.

(2) The first respondent-Industrial Tribunal has not appeared before us, and rightly so because it is a Tribunal which is not interested in the success or failure of the petitioner or the second respondent in this Court. The second respondent contests this writ petition on the grounds that he was workman concerned in the industrial dispute then pending before the Industrial Tribunal in I. D. 15/ 63 and that he was dismissed by the management for a misconduct which was connected with that pending industrial dispute.

(3) The main contention advanced on behalf of the petitioner is that the second respondent was not a workman concerned in the then pending industrial dispute and that he was not punished or dismissed by the management for any misconduct connected with that dispute and that consequently he could not prefer a petition to the Industrial Tribunal under S. 33-A of the Act. It cannot be doubted that if the second respondent was not a workman concerned with the pending industrial dispute and his dismissal was not for any misconduct connected with that dispute, the Industrial Tribunal had no jurisdiction to entertain his petition u/s 33-A of the Act and to direct that he be reinstated. The facts and circumstances of the case show that the second respondent was not a "workman concerned" in the pending industrial dispute and that he was not dismissed for a misconduct "connected with that dispute" , within the meaning of section 33(1) of the Act.

Ramaswamy Naidu, whose dispute was referred to the Industrial Tribunal was a cook in Ramagundam division of the petitioner-company, whereas the second respondent was a technician employed in the Kothagudem division of the company. Ramagundam is admittedly about 140 miles from Kothagudem. It is also common ground that the Union of workmen which sponsored the case of Ramaswami Naidu was quite different from the Union to which the second

respondent belonged. The dispute of Ramaswami Naidu related to whether he was only a probationer or had become a permanent workman. But that dispute had scarcely anything to do with the second respondent who was working as a permanent workman at Kothagudem, which was 140 miles away and in a different capacity and as member of a different labour Union. The theft which was alleged and held to be proved against the second respondent was in no manner connected with the dispute between the petitioner-company and Ramaswami Naidu. Whatever might be the decision in the case of Ramaswami Naidu, it could not have affected the second respondent, because he was admittedly a permanent workman even before Ramaswami Naidu raised the dispute. These facts show that there was hardly anything in common between Ramaswami Naidu and the second respondent except in a very loose and broad sense of both of them being employees of the same public limited company. I therefore find it difficult to say that the second respondent was a workman concerned in the dispute of Ramaswami Naidu or that the theft which was alleged and held proved against the second respondent was in any manner connected with the industrial dispute between Ramaswami Naidu and the petitioner.

(4) The learned counsel for the second respondent has however placed strong reliance on *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, . The facts of the instant case. There, a person who sponsored a pending industrial dispute and also who gave evidence in favour of the workman in that dispute was discharged by the management on the ground that his post was abolished. He took the stand that the termination of his service was the direct result of the indignation of the management on account of his having sponsored the other workman's dispute and given evidence in his favour before the Industrial Tribunal. The Industrial Tribunal upheld the version of the workman. The Supreme Court also agreed with that factual conclusion. Thus it was a case where the action taken against the workman was clearly connected with the pending industrial dispute. It was so connected because the action was the result of his sponsoring the industrial dispute and his giving evidence in favour of his co-workman in that dispute.

Further I see nothing in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, to support the very broad contention of the learned counsel for the second respondent that the many thousand workmen employed by a large concern will all be "persons concerned" in any pending industrial dispute between one individual workman and the management for the mere reason that all of them are employees of the same concern. On the other hand, the observations in *Upper Ganges Valley Electricity Supply Co. Ltd. v. G. S. Srivastava* (1963) 1 LLJ 237 show that such a broad interpretation cannot be given to the expressions "workmen concerned in such dispute" and "misconduct connected with the dispute" occurring in section 33(1) of the Act. See *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, . The decision of a single Judge of the Madras High Court in *Sandanasami Pillai Vs. C. Ponnuswami and Others*, is also

in support of the petitioner's contention. It is not gainsaid and indeed cannot be gainsaid that unless the second respondent was a workman who was concerned in Industrial Dispute 15/ 63 or his dismissal from service was for a reason connected with that industrial dispute, he was not competent to prefer a petition to the Industrial Tribunal under S. 33-A and the Industrial Tribunal could not validly exercise jurisdiction in respect of that petition. as I have already come to the conclusion that the second respondent in the instant case was neither a workman concerned in the pending industrial dispute nor a person who was dismissed for a reason connected with the dispute, I should hold that he was not competent to invoke S. 33-A of the Act and that the Industrial Tribunal was not competent to entertain and deal with his petition under that section.

(5) The result is this writ petition is allowed. I make no order as to costs.

(6) Petition allowed.