
(1990) 12 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16847 of 1990

N. Ch. Mouli

APPELLANT

Vs

Depot Manager, A.P.S.R.T. Corpn.

RESPONDENT

Date of Decision : 28-12-1990

Acts Referred:

Payment of Wages Act, 1936 — Section 9(2)

Citation : (1991) 1 ALT 492 : (1993) 3 LLJ 676

Hon'ble Judges : Sivaraman Nair, J

Bench : Single Bench

Advocate : Korra Prabhakar Rao, for the Appellant; D. Reddappa Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—Petitioners challenge an Order No. PA/398(7)/90-TKL Dt. 30.11.1990 made by the respondent effecting deduction of their wages for eight days u/s 9(2) of the Payment of Wages Act, for participation in an illegal strike from 17th to 19th of October, 1990. The facts leading to the impugned order are the following:

Petitioners are members of A.P.S.R.T.C. National Mazdoor Union. One of their members was suspended on 12.10.1990 pending disciplinary action. On the allegation that the management discriminated against (at the admission stage) their member, in that a conductor who was also involved in the same incident but belonging to a different trade union, viz., A.P.S.R.T.C. Employees' Union was shielded by the management and that amounted to unfair labour practice. The petitioners struck work without notice from 17th to 19th October, 1990. The strike was withdrawn when the management relented and withdrew the suspension of the driver. On 25.10.1990, the respondent issued a show cause notice proposing deduction of eight days' wages of the workmen who had struck work in view of the fact that the strike was illegal under the Industrial Disputes Act and G.O. Ms. No. 446 dt. 1.9.1990 whereunder the Government of A.P. had

prohibited strikes in the A.P.S.R.T.C. Though individual notices were not served on the employees, they showed cause against the proposal. The respondent, however, issued the impugned order dated 30.11.1990 deducting eight days' wages of the workmen and published that on the notice board. The respondent did not issue copies of the order to the workmen. It is that order which the petitioners challenge in this Writ Petition.

2. The main grounds which the petitioners urge is that the respondent has no jurisdiction to issue the impugned order, since the only penalty for strike which is illegal u/s 24 of the Industrial Disputes Act are provided in Section 26 of that Act and does not take in a power to recover damages or compensation from the workmen. The consequence of a strike in violation of the provisions of an order prohibiting it is also said to be the same. They also submit that neither the notice nor the order having been served individually on the concerned workmen, the orders are illegal and violative of the principles of natural justice. Yet another submission is that the order is arbitrary and vitiated by mala fides. It is also submitted that it amounts to unfair labour practice.

3. I should have thought that the petitioners have to exhaust the remedies available to them under the Payment of Wages Act, before they approach this Court under Article 226 of the Constitution of India. Counsel submitted that the position is covered by the decision of the Supreme Court in Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, and G.Y.N. Chainulu and Ors. v. Depot Manager, APSRTC, Amalapuram 1989 II C.L.R. 320 to the effect that the only penalty for participation in the illegal strike being that provided u/s 26 of the Industrial Disputes Act, deduction in wages u/s 9(2) of the Payment of Wages Act is not allowable.

4. Counsel for the respondent submitted that the decision in Chainulu and Ors. v. Depot Manager, APSRTC, Amalapuram : (supra) has been effectively overruled by the decision of a Division Bench of this Court in Writ Appeal Nos. 387, 517 and 579 of 1989. He also submitted that the decision of the Supreme Court in Rohtas Industries Ltd. (supra) has been considered by the Division Bench and identical contentions which the petitioners raised now have been negated.

5. It appears to me to be clear that the main contentions of the petitioners have to be negated in the light of the decision of the Division Bench. Counsel for the petitioners submitted that the Division Bench had no occasion to consider the effect of Section 26 of the Industrial Disputes Act as interpreted by the Supreme Court in Rohtas Industries case (supra) and therefore the matter has to be reconsidered. On a perusal of the decision of the Division Bench, I am of the opinion that this contention has to be rejected. The Division Bench held on a detailed examination of the relevant provisions of the Industrial Disputes Act and the Payment of Wages Act as also the Andhra Pradesh Essential Services Maintenance Act, that the penal provisions of these statutes contemplate imposition of penalty after a trial by a Criminal Court and that those provisions do not affect the right of the management to effect a cut in wages to the extent

permitted by the Payment of Wages Act. The Division Bench also held that the Payment of Wages Act, the Andhra Pradesh Essential Services Maintenance Act and Industrial Disputes Act operate in different fields and that there is no repugnance between the aforesaid Acts or the provisions therein. It is for these reasons that the Division Bench set aside the order of the learned single Judge in Chainulu and Ors. v. Depot Manager, APSRTC, Amalapuram (supra). It is the same question that the petitioners are urging now in support of their submissions. In so far as the Division Bench has spoken on the same question and I am entirely in agreement with the above view, the only course open for me is to dismiss the Writ Petition.

6. Counsel for the petitioners made an ingenious submission that the Division Bench has not appreciated the effect of Rohtas Industries decision (supra) correctly and therefore the matter may require reconsideration. He relied on the observations in paragraphs 29 to 31 in Rohtas Industries decision (supra) to contend that penal deduction in wages of the employees is really a measure of compensation to the employer and that cannot be recovered in view of the absence of any such provision in Section 26 of the Industrial Disputes Act. I do not understand the penal deduction of wages to be a measure of compensation. It may perhaps be damages and damages can also be penal as provided u/s 14-B of the Employees' Provident Funds Act, as interpreted by the Supreme Court in Organo Chemical Industries v. Union of India 1979 LIC 1261. The measure for penal damages may as well be a provision for enforcement of discipline. Either way it cannot amount to measure of compensation.

7. I have also to take note of the important fact that the only question considered in the Rohtas Industries case (supra) was whether an arbitrator u/s 10-A of the Industrial Disputes Act could have awarded compensation, since there was no provision in the Industrial Disputes Act, enabling award of the same. The Court rightly confined its attention to the provisions of the Act. The Court also held that "the claim for compensation can be a lawful subject for arbitration only if it can be accommodated by the definition of "industrial dispute" in Section 2(k)". It was further held that: -

"We may state that compensation for loss of business is not a dispute or difference between employers and workmen "which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person". We are unable to imagine a tort liability or compensation claim based on loss of business being regarded as an industrial dispute as defined in the Act having regard to the language used, the setting and purpose of the statute and industrial flavour of the dispute as one between the management and workmen".

8. No such question of a claim for compensation being outside the purview of an Industrial Dispute arises for consideration before me. The question pure and simple is, whether the employer is entitled to effect a deduction in wages of the workmen for absence without permission for the purpose of participation in an

illegal strike. The clear answer is that Section 9(2) provides for that. That provision is not shown to me to be ultra vires any provision of any other Act bearing on the same question. The plea of absence of jurisdiction cannot therefore be entertained.

9. Any question of impropriety or illegality in effecting the deduction can be the subject matter of challenge under the Payment of Wages Act before the Authority constituted under that statute. Petitioners have not made out any extraordinary circumstances justifying the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, notwithstanding the availability of an equally efficacious alternative statutory remedy. The Writ Petition therefore fails and is accordingly dismissed. No costs.