
(1997) 06 KAR CK 0058
In the Karnataka High Court
Case No : Writ Petition No. 24434 of 1992

N.M. Naik

APPELLANT

Vs

The Presiding Officer, Labour Court, Hubli and Another

RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10 (4-A), 2 (b)

Citation : (1998) 1 KarLJ 711

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri S.B. Mukkannappa, for the Appellant; Sri Mukunda Menon, for the Respondent

Judgement

1. Petitioner, working at the relevant time as conductor in the second respondent KSRTC, was dismissed from service for proved misconduct in a domestic enquiry held in that regard. He raised an industrial dispute. The Appropriate Government made a reference to the Labour Court, Hubli, at Reference No. 173 of 1987. That reference was dismissed for non-prosecution for the default of the petitioner-workman, by the award of the Labour Court dated 1-8-1988. It is stated at the Bar that the said award was also duly published. In the mean time, taking advantage of the introduction of Section 10(4-A) of the Industrial Disputes Act, 1947 ("Act" for short), petitioner filed an application before the Labour Court raising the very same dispute, but this time u/s 10(4-A) of the Act. It is not in dispute that this application came to be filed within six months from the date of the enactment of the Industrial Disputes (Karnataka Amendment) Act, 1987 and, as such, it was in time. Left to itself, this application u/s 10(4-A) of the Act had to be considered on merits. But, on the main ground that the very dispute had already been adjudicated upon in the earlier Reference No. 173 of 1987, though the said reference came to be dismissed for default, the Labour Court, by the award dated 28-10-1991 (Annexure-B), dismissed the said application u/s 10(4-A) of the Act as not maintainable. Petitioner-workman seeks quashing of the said

award at Annexure-B under Articles 226 and 227 of the Constitution.

2. That the petitioner, during the pendency of the earlier reference, committed default in appearing before the Labour Court concerned on the date reference was called, and, as such, reference was dismissed for default, is not in dispute. Rule 22 of the Industrial Disputes (Central) Rules, 1957 inter alia provided that if, without sufficient cause being shown, any party to a proceeding before the Labour Court fails to attend the said Labour Court, then, the Labour Court may proceed as if such party had duly attended or represented. The Labour Court, therefore, was within its right to proceed to deal with and to dispose of the said reference even though the petitioner-workman was not actually present before it on that day. Before the award became enforceable, petitioner-workman could still have gone back to the Labour Court and convince it that he had sufficient cause for not being present on the day reference was called and dismissed. In the present case, petitioner had not done so. He has straight away filed an application, this time u/s 10(4-A) of the Act.

3. The only question that arises in this case is whether the award passed earlier in Reference No. 173 of 1987, could be called an "award" within the meaning of Section 2(b) of the Act. If it could be called an award, then, Section 17 requires that the same should be published. The said award becomes enforceable u/s 17A on expiry of 30 days from its publication u/s 17. u/s 18(3) of the Act, such an award would be, binding on both the parties to the dispute, and the petitioner-workman cannot subsequently be heard to say that he is not bound by the said award and that the dispute that he had earlier raised should again be adjudicated upon.

4. In my opinion, the rejection of reference for default of the workman cannot be called an "award" within the meaning of Section 2(b) of the Act. This is the view taken in other decisions also, to be presently referred to.

5. Section 2(b) inter alia defines "award" as meaning an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court. Such determination of an industrial dispute or question relating thereto is undertaken by the Labour Court on reference being made u/s 10 of the Act, or by an application u/s 10(4-A) of the Act, where the said section is applicable. In both the events, what is prerequisite is that there was a dispute that needed to be adjudicated upon. Where a dispute is felt so important as to necessarily need an adjudication by the concerned forum, and not a frivolous one in respect of which reference could be refused by the Appropriate Government, it is expected that such a dispute has to be determined on merits. The Labour Court/Industrial Tribunal, therefore, cannot treat such reference as just a dispute between two individuals in a civil proceeding so that it could be dismissed for default of the workman who would be in the position of plaintiff in a suit. The essence of the entire scheme of reference of the dispute for adjudication to a Labour Court/Industrial Tribunal under the Act being one of determination of the dispute on merits, just because the Labour Court/Industrial Tribunal disposes of

the reference for the absence of the workman, such an order cannot be called an "award" within the meaning of Section 2(b) of the Act, since, as required under the said Section 2(b), there would be no determination of any industrial dispute at all but would merely be a disposal of reference. The inevitable conclusion to be reached, therefore, is that, though, in view of Rule 22 of the Rules as earlier referred to, even where the workman remains absent, the Labour Court/Tribunal can proceed to deal with reference, such dealing with the reference shall have to be for the purpose of determination of reference on merits so that the order that it eventually passes could be termed an "award" within the meaning of Section 2(b) of the Act. The Labour Court/Industrial Tribunal cannot and shall not dispose of the proceedings for default of either of the parties. Where such rejection of reference is made without consideration of merits and without adjudicating upon the dispute referred, in my opinion, such an order cannot be called an "award" within the meaning of Section 2(b) of the Act. If it is not an "award" within the meaning of Section 2(b), then, merely because it is published u/s 17, it does not become an award enforceable u/s 17A and binding on the parties u/s 18(3). The order in the earlier reference, dated 17-3-1987, therefore, was not an "award" within the meaning of Section 2(b) of the Act. The application u/s 10(4-A) of the Act having been filed by the petitioner-workman in exercise of the right given to him by the Amendment Act referred to above within the time prescribed therein, petitioner-workman had a right to have the dispute concerned adjudicated upon. The Labour Court, therefore, acted arbitrarily in disposing of the said application as not maintainable.

6. In *Andhra Handloom Weavers Co-operative Society Vs. State of Andhra Pradesh and Others*, , the Andhra Pradesh High Court was considering the question as to whether the disposal of the case arising upon reference by the Government u/s 10(4-A) of the Act, for default of appearance of the workman, was an "award" within the meaning of Section 2(b) of the Act, so as to preclude the Government from making fresh reference u/s 10(1)(c) of the Act in respect of the same matter. The Andhra Pradesh High Court held that mere dismissal for default is surely not an adjudication, and does not result in any determination of an industrial dispute, and was therefore, not an award.

7. In *The Maharana Mills Kamdar Union and Others Vs. N.L. Vyas and Another*, , the Tribunal had allowed the matter to be withdrawn in order that it may be referred to a private Arbitrator for adjudication. The question that, therefore, arose was whether there was determination of the dispute itself by such permission to withdraw. The Bombay High Court held that where the Tribunal allows the matter to be withdrawn in order that it may be referred to private Arbitrator for adjudication, there remains no dispute before it on which it can adjudicate, and that there was also no determination of the dispute itself and the dispute continues but, instead of being decided by the Industrial Tribunal, it is to be decided by the private Arbitrator. The High Court said that there was, therefore, no determination in such case muchless it was a determination by an Industrial Tribunal. The Bombay High Court proceeded to observe that even

though such orders of the Tribunal are described as awards and were published as such in the Official Gazette, they were not awards within the meaning of the Act.

8. In *The Workmen of Gowribidanur Sahakari Sakkare Karkhane Ltd. Vs. The Management of Gowribidanur Sahakari Sakkare Karkhane Ltd.*, , the necessity of disposing of reference on merits by the Labour Court/Industrial Tribunal was stressed. It was observed that in cases wherein disputes are referred for adjudication before the Industrial Tribunal as between labour and the management, it would invariably result in denial of justice if, merely on the ground of absence before the Tribunal on a particular date of hearing, the reference itself is rejected and the very purpose of adjudication defeated. This Court pointed out that, what is of greater importance is the necessity of disposing of the dispute referred to the Tribunal for adjudication on merits, after enquiry, and after a reasonable opportunity of hearing given to both the parties. It was then pointed out, that though the statute may not provide for dismissal of the disputes on merits in the absence of the parties, requirement of justice demand that, in any event, adjudication ought to be on merits, and ex parte rejection of reference does not amount to adjudication of a dispute.

9. In *Technological Institute of Textiles, Bhiwani v Labour Court, Rohtak and Another*, it was held that though ex parte decision was possible under Rule 22 of the Industrial Tribunal (Central) Rules, 1957, the Labour Court cannot, by making a rule or otherwise, absolve itself of the duty to determine the industrial dispute referred to it on merits, that the said Rule 22 would only enable the Labour Court to proceed as if a party had duly attended or had been represented, even if such a party is absent and if sufficient cause is not shown for his absence. It was pointed out that it does not enable the Labour Court either to do away with the enquiry or to straight away pass an award without giving a finding on the merits of the dispute. It was held that the reference made to the Labour Court is required to be answered and the Labour Court is bound to proceed and decide the matter on merits even if the applicant absents himself, and that the reference u/s 10 of the Act sets in motion the adjudication proceedings, and they cannot stop except by the passing of an award. The Punjab and Haryana High Court further observed that strictly speaking, it cannot even dismiss the dispute for non-prosecution and, in any case, any action so taken would not constitute an award and entail subsequent consequences recognised under the Act.

10. Dealing with analogous situation but in the field of making a second request for reference, this Court in *Banavasi Vyavasaya Seva Sahakari Sangh Ltd. Vs. N.C. Bapat*, , observed that mere refusal to refer the dispute to the Labour Court does not put an end to the industrial dispute, and that, by refusal to refer the dispute, the power of the Government to make a reference is not exhausted, and that in appropriate cases, the Government is entitled to reconsider the matter and make a reference if the Government feels that it is necessary in the interest

of industrial peace. It was pointed out that in other words, by refusing to make reference, the industrial dispute does not come to an end.

11. In the result, it must be repeated that the Labour Court/Industrial Tribunal cannot dismiss the reference for default, but shall go into the merits and adjudicate upon the dispute and to finally determine the dispute or the question relating thereto, as to make the concerned order an "award" within the meaning of Section 2(b) of the Act.

12. The order of rejection of Reference No. 173 of 1987 not being an "award" within the meaning of Section 2(b) of the Act, the industrial dispute concerned very much remained to be adjudicated upon, and the petitioner-workman having approached the Labour Court in exercise of his right u/s 10(4-A) of the Act, had the right to have the said dispute determined on merits. The Labour Court failed to exercise its jurisdiction in declining to entertain his application on merits.

13. Petition is allowed. The impugned order of the Labour Court, dated 28-10-1991, (Annexure-B) is quashed. Matter is remitted to the Labour Court, Hubli, for disposal according to law and on merits. The Labour Court shall complete the adjudication within six months from the date it receives a communication of this order.