

(1999) 10 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 357 of 1999

North West Karnataka Road Transport Corporation, Central
Offices, Hubli and Another

APPELLANT

Vs

I.H. Gadwal

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Industrial Disputes (Karnataka Amendment) Act, 1987 — Section 10, 10 (4-A), 9 C
Industrial Disputes Act, 1947 — Section 2 A

Citation : (2000) 84 FLR 761 : (1999) ILR (Kar) 4588 : (2000) 1 KarLJ 396 :
(2000) 1 LLJ 667

Hon'ble Judges : Y. Bhaskar Rao, C.J.; A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Sri V. Mukund Menon, for the Appellant; Sri S.V. Shastri, for the Respondent

Judgement

Y. Bhaskar Rao, C.J.—This appeal is filed by the KSRTC assailing the order of the learned Single Judge modifying the award of the Labour Court.

2. Brief facts of the case are that the respondent-conductor was dismissed from service on 6-7-1977 after conducting a domestic enquiry. Thereafter, he made an application to the Government to make a reference of his dispute arising from his dismissal from service. The Government vide order dated 29-10-1986 refused to refer the matter stating that there is an inordinate delay.

3. By amendment, Section 10(4-A) was incorporated in the Industrial Disputes Act on 7-4-1988. Thereafter, the respondent-Conductor filed a petition before the Labour Court u/s 10(4-A) of the Industrial Disputes Act on 30-7-1988. The Labour Court on trial held that the domestic enquiry held was not fair and proper. Thereafterwards, the Management did not lead any evidence. Therefore, the Labour Court set aside the dismissal order and directed reinstatement with full back wages along with continuity of service. Assailing that order, the present writ petition is filed.

4. The learned Single Judge after considering the rival contentions, modified the award of the Labour Court and directed reinstatement with 50% back wages. Assailing that order, present appeal is filed.

5. The learned Counsel for the appellant contended that when once the Government has rejected the reference, further application u/s 10(4-A) of the Act is riot maintainable as the Government has already decided that there is no need to make a reference to the Labour Court in view of long delay of 8 years in raising the dispute. Therefore, the Labour Court should not have entertained the petition.

6. On the other hand, the learned Counsel for the respondent contended that refusal of Government to refer the matter to the Labour Court u/s 10(1) of the Act is not a bar from filing a petition u/s 10(4-A) of the Act and there is no res judicata. In view of the above contentions, the important question that arises for consideration is whether the earlier refusal of the Government to refer the dispute to the Labour Court amounts to res judicata to entertain a petition u/s 10(4-A) of the Act. To appreciate the above contentions, it is relevant to extract Section 10(4-A) of the Industrial Disputes Act, 1947.

"(4-A) Notwithstanding anything contained in Section 9-C and in this section, in the case of a dispute falling within the scope of Section 2A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-section (1)".

Note; An application under sub-section (4-A) may be made even in respect of a dispute pending consideration of the Government for reference, on the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987".

7. By reading the above Section, it is manifest that a right is given to the individual workman to apply in the prescribed manner to the Labour Court within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987. The above section further says that right to file an application by the workman is notwithstanding anything contained in Section 9-C and in Section 10 of the Act. Therefore, this Section has provided an independent right to file a petition even though earlier an application seeking reference to the Labour Court was rejected by the Government on the ground that that application u/s 10(4-A) is not maintainable. Therefore, an independent right is given to file an application in the prescribed form before the Labour Court.

8. The question whether the refusal of the Government to refer the dispute to the Labour Court is a bar to consider again when there is fresh material, is also

considered by the Supreme Court in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, . This Court in Banavasi Vyavasaya Seva Sahakari Sangh Ltd. Vs. N.C. Bapat, , has extracted the relevant para of the Supreme Court judgment which reads as follows:

"Merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be a review of any judicial or quasi-judicial order or determination. The industrial dispute may nonetheless continue to remain in existence if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference on the only ground that on an earlier occasion it had declined to make the reference. The expression "at any time" in Section 10(1) will clearly negative the contention that once the Government declines to make a reference u/s 10(1) in respect of the same dispute gets exhausted. Such a construction would denude a very vital power conferred on the Government in the interest of industrial peace and harmony and it need not be whittled down by interpretative process".

Thus, the Supreme Court held that the refusal of the Government to refer the dispute to the Labour Court u/s 10(1) of the Act is not bar to consider when there is fresh material. Whether to refer the dispute to the Labour Court or not is a question to be decided on the material on record. The refusal to refer the dispute to the Labour Court prima facie is no ground for holding that an application u/s 10(4-A) is not maintainable. The learned Single Judge after elaborately considering all the provisions of the Act and judgment of the Supreme Court referred in M/s. Avon Services Production Agencies Private Limited's case, supra, has held that the refusal of the Government to refer the dispute to the Labour Court is not a bar to file an application and still an application can be filed u/s 10(4-A) of the Act even though earlier the Government has refused to refer the dispute. Therefore, we affirm the view taken by the Single Judge.

9. Further, the Supreme Court in M/s. Avon Services Production Agencies Private Limited's case, supra, has clearly held that it is not a bar for the Government to consider an application to refer the dispute even though it has refused earlier, when there is fresh material. In view of the above facts and circumstances, we hold that the refusal of the Government to refer the dispute u/s 10(1) of the Act earlier to the incorporation of Section 10(4-A) of the Act is not a bar to entertain an application filed u/s 10(4-A) under the terms and conditions stipulated u/s 10 of the Act.

10. The learned Counsel for the appellant secondly contended that the employee was dismissed from service in the year 1977 whereas the dispute came before the Labour Court in the year 1988. Thus, there is 11 years delay and it is not possible for the Management to preserve the evidence for years together particularly when an application is preferred after 11 years. The Labour Court

after considering the facts and circumstances of the case has passed an award directing reinstatement with full back wages and further the learned Single Judge modified the award of the Labour Court and directed reinstatement with 50% back wages.

In view of the facts and circumstances of the case, we do not see any ground to interfere and this appeal is accordingly dismissed.