
(1989) 09 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7509 of 1989

Nutrine Confectionery Co., Ltd., Chittoor

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 14-09-1989

Acts Referred:

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

Citation : (1999) 6 ALD 618 : (1999) 6 ALT 87 : (2000) 1 LLJ 655

Hon'ble Judges : S.V. Maruthi, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : Mr. P. Nageswara Sree, for the Appellant; Government Pleader for Labour and Mr. P. Veera Reddy, for the Respondent

Judgement

S.V. Maruthi, J

1. This writ petition has been filed by the Management of M/s. Nutrine Confectionery Company Limited, Chittoor challenging the validity of Section 2-A(2) of the Industrial Disputes Act, 1947.

2. The facts in brief are that the third respondent is a workman in the petitioner-company. A charge-sheet was issued to him on the allegation that he committed serious acts of misconduct. An inquiry was conducted and on the basis of the inquiry report he was dismissed from service on 8-11-1982. The third respondent along with the other workmen, who were also dismissed on the ground of misconduct, raised industrial dispute in the year 1983 before the Conciliation Officer u/s 2-A of the Industrial Disputes Act, for short "the Act", questioning the dismissal order. Thereafter, the Government rejected the reference by an order dated 27-1-1984 on the ground that the dispute does not merit for reference and thus declined to make any reference. The third respondent along with order workmen filed writ petitions, namely WP Nos.16248, 16253, 16257, 1624 and 16290 of 1986 before this Court. This same were disposed of this Court by an order dated 10-11-1986 directing the Government to reconsider the decision.

Accordingly, the Government reconsidered the matter and by its order dated 19-6-1987 again refused to refer the dispute for adjudication. Immediately thereafter, the State of Andhra Pradesh amended Section 2 of the Act by Act 32 of 1987 incorporating sub-section (2) u/s 2-A of the Act. The amendment came into force with effect from 27-7-1987. Taking advantage of the amendment introduced u/s 2-A of the Act, the third respondent directly approached the Labour Court by filing a claim petition, which was registered by the Labour Court as ID No.76 of 1989. In the said ID the third respondent sought for reinstatement into service. Aggrieved by the registration of the claim petition filed by the third respondent u/s 2-A(2) of the Act, the present writ petition is filed.

3. The main argument of the learned Counsel for the petitioner, Sri P. Nageswar Sree is that sub-section (2) of Section 2-A, which was introduced in the year 1987, is inconsistent with the provision of the Industrial Disputes Act. The learned Counsel submits that the new provision enables the workmen to approach the Labour Court for adjudication of the disputes referred to u/s 2-A of the Act directly notwithstanding anything contained in Section 10 of the Act. In other words, it gives a go-bye to Section 10 under which the Government alone is competent to make a reference to the Labour Court or an Industrial Tribunal. Counsel also submits that the Government refused to make reference u/s 10 on the ground that no industrial dispute exists and the said decision has become final. He further submits that if the third respondent is aggrieved by the said decision, it was open to him to approach this Court by way of a writ petition under Article 226 of the Constitution and since he has not challenged the said decision, he cannot be permitted to approach the Labour Court under the new provision directly, that too after a long lapse of time. He also submits that u/s 10 of the Act it is only the Government which is competent to make a reference enabling the workmen to approach the Labour Court and the new provision enabling the workmen to approach the Labour Court directly is inconsistent with the provision u/s 10 of the Act.

4. The learned Counsel appearing for the third respondent, however, relying on a decision in Detergents India Limited v. Labour Court, Anantapur, 1993 ALT Suppl. (1) 232, contends that when once the Government refused to make a reference, the industrial dispute exists and therefore the workman is entitled to take benefit of the amended provision introduced in the year 1987.

5. The question that arises for consideration in this petition is whether Section 2-A(2) of the Act, which enables the workmen to approach the Labour Court for adjudication of a dispute mentioned in Section 2-A is inconsistent with the provision contained in Section 10 of the Act.

6. At this stage, it is necessary to refer to Section 2-A and the amendment, which was introduced in the year 1987, which read thus:

"Section 2A. Dismissal etc., of an individual workman to be deemed to be a

industrial dispute :--Where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute.

(2) Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner, direct to the Labour Court for adjudication if the dispute referred to therein; and on receipt of such application, Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provision of this Act, and accordingly all the provision of this Act shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

7. Under the Act, if an industrial dispute exists and is apprehended, the Government is competent to make a reference to the Labour Court. Normally, the dispute regarding an individual workman is not treated as an industrial dispute unless the union to which he or a group of workmen belongs sponsors it. Therefore, Section 2-A was introduced under which an individual dispute between a workman and an employer relating to discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that it has not been espoused by the union or other workmen. In other words, u/s 2-A of the Act an individual dispute is treated as an industrial dispute. Sub-section (2) is an amendment introduced by the State of Andhra Pradesh enabling the individual workman to directly approach the Labour Court for adjudication of the industrial dispute referred to in Section 2-A of the Act. Therefore, though it is an individual dispute it became an industrial dispute and u/s 2-A(2) an individual workman is permitted to approach the Labour Court directly if an industrial dispute exists. The industrial dispute referred to u/s 2-A relates to the discharge, dismissal, retrenchment or termination. Therefore, if the services of a workman are terminated or the workman is dismissed from service, since it is an industrial dispute, he is entitled to approach the Labour Court directly without seeking a reference u/s 10 of the Act. It is true that u/s 10 of the Act it is only the Government which is competent to make a reference to the Labour Court if an industrial dispute exists. In our view, the fact that it is only the Government which is competent to make a reference u/s 10 of the Act if an industrial dispute exists, does not make the new provision inconsistent with the said provision. Section 10 as well as sub-section (2) of Section 2-A of the Act operate in different fields under different circumstances. Section 10 of the Act operates where the union or other workmen espouse the cause of a workman while Section 2-A(2) of the Act operates in cases where the union does not espouse the cause of an individual workman. Further, it is only in a case where the workman is discharged or dismissed or retrenched from his service or terminated, Section 2-A and Section 2-A(2) of the Act apply. In all other cases,

Section 10 of the Act applies. If a workman has been wrongly terminated or in a case where wrongful dismissal or retrenchment without following the provisions of the Act or discharge of a workman was illegal, if the Government does not make a reference on the ground that it has not been espoused by the union, the workman will be left without any remedy. Therefore, to meet such situations, the State of Andhra Pradesh incorporated Section 2-A(2) of the Act in order to protect the interest of an individual workman whose services were terminated wrongfully and where an industrial dispute exists. It is, therefore, clear that in all other cases other than those cases covered by Section 2-A(2) of the Act Section 10 applies. Hence, there is no substance in the argument of the learned Counsel for the petitioner that Section 10 of the Act becomes meaningless in view of sub-section (2) of Section 2-A of the Act.

8. It is pertinent to point out in the facts of the present case that the Government refused to refer the case to the Labour Court and therefore there is no settlement of dispute either amicably or by adjudication by a competent Court. When once there is no settlement of a dispute, the dispute exists and if the Government refused to make a reference, the workman is left with no remedy.

9. The learned Counsel for the petitioner relying upon the amendment introduced to Section 2-A of the Act by the State of Tamil Nadu contended that the amendment made by the State of Andhra Pradesh ought to have been in similar lines. It is, therefore, necessary to refer to the amendment made by the State of Tamil Nadu, which reads thus:

"In its application to the State of Tamil Nadu Section 2-A be re-numbered as sub-section (1) and after sub-section, as so re-numbered, the following subsection be inserted, namely:

(2) Where no settlement is arrived at in the course of any conciliation proceedings taken under this Act in regard to an industrial dispute referred to in sub-section (1), the aggrieved individual workman may apply, in the prescribed manner, to the labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if, such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication."

10. We do not see any difference between the amendment introduced by the State of Tamil Nadu and the amendment introduced by the State of Andhra Pradesh. The only difference we find is that in the Tamil Nadu amendment an individual workman is allowed to approach the Labour Court directly only in a case where settlement is not arrived at in the course of conciliation proceedings. It is true, in the amendment introduced by the State of Andhra Pradesh it is not provided that only in a case where settlement is not arrived at in the course of conciliation proceedings an individual workman is allowed to approach the Labour

Court. In our view, even in the absence of these words specifically in the amendment introduced by the State of Andhra Pradesh, still the workman has to approach the Labour Court only if the conciliation proceedings fail as sub-section (2) of Section 2-A of the Act starts with a non-absentee clause namely "notwithstanding anything in Section 10", In other words, it excludes only Section 10 and not other provisions of the Act, Therefore, u/s 2-A(2) of the Act a workman can approach the Labour Court directly only when conciliation proceedings fail. In the circumstances, we reject the argument of the learned Counsel for the petitioner. We have fortified in our view by the judgment of this Court in Detergent India" Limited's case, referred to above. That was a case where the Government refused to make a reference to the Labour Court and in the meanwhile the amendment u/s 2-A(2) of the Act was introduced. The workman therein then sought for a reference to the Labour Court. It was challenged on the ground that Section 2-A(2) of the Act has no retrospective effect. In that background it was held in the said case as under:

"The question of giving retrospective effect to Section 2-A(2) of the Act does not arise as Section 2-A(2) enabled the Government to approach the Labour Court directly when an industrial dispute exists. As long as the dispute is not resolved amicably or adjudicated by the competent Court the dispute lingers on and it survives. During the lingering of such dispute whenever procedural provision like sub-section (2) of Section 2-A is enacted, the workman can take advantage of the said provision and approach the Labour Court."

While dealing with Section 2-A(2) the learned Judge held as under:

"It is purely a procedural provision. It indicates the procedure for approaching the Labour Court for adjudication of the lingering industrial dispute between the workman and the employer, whether such dispute can be brought to the Labour Court via Section 10 machinery after taking preliminary step of going to the Conciliation Officer u/s 12 or whether such dispute can be brought to the Labour Court as per sub-section (2) Section 2-A, it would indicate only the machinery provision or the procedural provision for indicating the route through which the dispute must travel so as to enter the portals of the Labour Court, which is a competent Court to adjudicate upon the dispute."

11. From the facts narrated above, it is clear that the conciliation proceedings failed and thereafter the Government refused to make reference u/s 10 of the Act. Since there was failure on the part of the Government to make a reference u/s 10, the dispute continues to exist and remained unresolved amicably or by adjudication by a competent Court and therefore the third respondent is entitled to approach the Labour Court under sub-section (2) of Section 2-A of the Act.

12. It is unfortunate that the writ petition was filed in the year 1989 and the petitioner obtained stay of passing of award and the same is pending for ten years. Since the Counsel for the respondent submitted that the inquiry is over and award is to be passed, we direct the Labour Court to pass the award on

merits, within a period of three months from the date of receipt of a copy of this order.

13. The writ petition is accordingly dismissed. No costs.