
(2001) 11 AP CK 0123
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1349 of 2001

Pedada Madhusudana Rao

APPELLANT

Vs

Hindustan Steel Works Construction Ltd. and Others

RESPONDENT

Date of Decision : 16-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 1 ALD 620 Supp

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : N. Siva Reddy, for the Appellant; T. Veerabhadraiah, G.P. For Labour and V. Ravinder Rao, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—This appeal is directed against a common order dated 25-4-2001 passed by a learned single Judge of this Court in a batch of writ petitions whereby and where under an award passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam was set aside with various directions. Respondent No.2-workman in W.P.No.13378 of 1999, which is one of the batch of writ petitions disposed of by the learned single Judge passing the impugned order, is the appellant herein. In view of the order proposed to be passed by us, it is not necessary to take note of the fact of the matter in great details.

2. Application was filed by the concerned workman, who worked as pump operator for the last eleven years in the employment of the respondents. The workman claimed to have served the management of the 1st respondent-Company for more than 240 days continuously in a year. He was removed from service by the 1st respondent on the pretext that the construction work was over, though in fact the work continued inasmuch as there was no such thing as completion of works in the 1st respondent-Company.

3. The workman filed a writ petition being W.P.No.12443 of 1988 before this

Court wherein this Court inter alia held that it was a fit case for raising an industrial dispute, pursuant whereof an industrial dispute being I.D.No.429 of 1995 was filed. The management before the Labour Court, as also in the writ petition, inter alia contended that they had been assigning jobs to the contractors on job to job basis and the workman came to be employed by such contractors where after the workmen themselves formed into an association or society, as the case may be, and cornered the job work for being executed by the workers themselves as members of such societies. According to the management a workman while working would be a workman of the society, although he may be a member of that society. Before the industrial tribunal, witnesses were examined and various documents were filed. The learned Tribunal formulated the following questions for its consideration:

1. Whether there is employer-employee relationship between the workman and HSCL company, the management herein?
2. If so, whether the workman is qualified to the protection U/s. 25F of the I.D. Act?
3. Whether there is the factum of retrenchment?
4. If so, whether the retrenchment is valid?
5. To what relief?

4. In its award dated 12-3-1999 the learned Tribunal held that there existed a relationship of employer and employee between the workman and the management. It was further held that the order of retrenchment was violative of Section 25-F of the Industrial Disputes Act and the management has taken recourse to unfair labour practice as envisaged under Chapter V-C of the Industrial Disputes Act. The Industrial Tribunal passed an award declaring the retrenchment of the workman as illegal and directed the management to reinstate the workman with back wages and continuity of service. Questioning the said award, the management of the Company filed the writ petition.

5. The learned single Judge although noticed the pleadings of the parties, as also the award passed by the industrial tribunal, did not go into the aforementioned question and remitted the matter back for fresh consideration of seven questions enumerated therein only on the ground that such award is difficult to be sustained as the pleadings are not specific and they are vague. It was observed in the impugned order that in the light of the stand taken by the petitioner-company that it is getting the works executed through the agency of the cooperative societies, it is to be decided whether the action of the petitioner company in following unfair labour practice of throwing away the petitioners out of employment even without following the procedure laid down in Industrial Disputes Act in the light of the provisions of the Contract Act as well as various decisions rendered by the apex Court and this Court having utilized the services of the workmen for over a decade.

6. Mr. Subba Reddy, learned senior counsel appearing on behalf of the appellant would submit that having regard to the finding of fact arrived at by the Industrial Tribunal that there exists a relationship of employer and employee by and between the writ petitioner-company and the workman and such a finding of fact having been arrived at upon piercing the veil, the impugned award could not have been set aside by the learned single Judge. The learned counsel would submit that even in the recent decision of the apex Court in STEEL AUTHORITY OF INDIA v. NATIONAL UNION WATERFRONT WORKERS¹ it has clearly been held that in a case of this nature an industrial dispute would be maintainable.

7. The aforementioned submission of the learned counsel appears to be correct.

8. The award passed by the Industrial Tribunal-cum-Labour Court can be challenged on specific grounds. It is for this Court having regard to the parameters of judicial review to consider as to whether the Tribunal in passing the award has committed any illegality, irrationality or procedural impropriety. This Court, in our considered view, in exercise of its jurisdiction under Article 226 of the Constitution of India ordinarily should not go beyond the records of the matter and direct the parties to raise additional pleadings and formulate questions which never arose in the list between the parties before the Tribunal. We therefore are of the opinion that the impugned order of the learned single Judge cannot be sustained. It is set aside accordingly and the matter is remitted back to an appropriate Bench for consideration of the matter afresh.

9. The writ petition is accordingly allowed. No order as to costs.