
(1958) 01 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 330 of 1955 (E)

P.K. Pavoo

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 31-01-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 16, 9

Citation : AIR 1959 Ker 65

Hon'ble Judges : Sankaran, Acting C.J.;Vaidialingam, J

Bench : Division Bench

Advocate : P. Balagangadhara Menon, for the Appellant; Government Pleader, for Respondents 1 and 2, G.B. Pai, P. Govindan Nair and K.V.R. Shenoi for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Vaidialingam, J.—This is an application to call for the records and to quash by a writ of certiorari or any other appropriate writ the award of the Industrial Tribunal, Ernakulam in Adjudication No. 28/1951 as confirmed by the Labour Appellate Tribunal, Madras in Appeal No. III-73/1954 in so far as it is against the petitioner and also to issue a writ in the nature of Mandamus or any other appropriate writ to the 1st respondent to refer an industrial dispute to the Tribunal at Trivandrum and also for the issue of a writ in the nature of Mandamus to the Industrial Tribunal, Trivandrum to enquire into the dispute.

2. In the view that we take in this matter, it is unnecessary to mention in any great detail the several contentions of the parties before the Industrial Tribunal, the Labour Appellate Tribunal of India, Madras, and in these proceedings before this Court. It is enough to state that by order 19-9-1951 the then State of Travancore Cochin referred an industrial dispute for adjudication to the Industrial Tribunal. Ernakulam regarding the validity or otherwise of the suspension and subsequent discharge of the petitioner and also as to the reliefs that he may be

entitled to. The Industrial Tribunal enquired into the matter and upheld the objection of the Bank of Cochin Ltd., that the petitioner is not a workman within the meaning of the term as defined in Section 2(c) of the Industrial Disputes Act, 1947. But the Tribunal went into the other points and came to the conclusion that the action of the management as against the petitioner was not justified and that if any relief is to be granted, the petitioner will be entitled to be reinstated with all arrears of pay. But in view of its finding that the petitioner was not a workman, the Tribunal held that it has no jurisdiction to grant any relief to the applicant.

3. Against the decision of the Industrial Tribunal, Ernakulam, both the petitioner and the third respondent before us filed appeals to the Labour Appellate Tribunal of India, Madras. Appeal No. 73/1954 before the Tribunal was by the applicant challenging the finding of the Tribunal to the effect that he was not a workman within the meaning of the Act and Appeal No. 65/1954 was by the third respondent-Bank challenging the findings recorded by the Tribunal against the Bank as also its jurisdiction to go into those matters when once it decided that the petitioner was not a workman. By order dated 30-8-1955, the Labour Appellate Tribunal of India, Madras dismissed both the appeals and confirmed in toto the order of the Industrial Tribunal, Ernakulam.

4. The present application has been filed by the petitioner challenging the decision of the Industrial Tribunal in so far as it is against him as confirmed by the Labour Appellate Tribunal of India, Madras. The third respondent filed a counter affidavit supporting the decision of the Tribunal as also that of the Labour Appellate Tribunal of India, Madras regarding the points decided against the petitioner. In paragraph 15 of the counter affidavit the third respondent had stated as follows :

"I am advised that the Bench of the Labour Appellate Tribunal which made this decision in this case having its permanent seat at Madras and having pronounced its decision in this case at Madras, is not amenable to the jurisdiction of this Hon"ble Court and that this application will not, therefore, lie."

5. At the beginning of the arguments Mr. G. B. Pai, learned counsel appearing for the third respondent, raised a preliminary objection about the maintainability of this application on the ground that the order of the Industrial Tribunal, Ernakulam has become merged in the appellate order of the Labour Appellate Tribunal of India, Madras and this Court has no jurisdiction to issue the writ asked for against the said Tribunal at Madras.

Naturally, he relied upon the recent decision of this Court (Kumara Pillai and Vaiclialingam, JJ.) in *Arthur Import and Export Co., Bombay v. Collector of Customs, Cochin*, O. P. 278 of 1956: 1958 KLT 130; (AIR 1958 Kerala 357), decided on 13-1-1958. This Court has very elaborately considered the case law on the subject and also the several decisions of the several High Courts including that of the Supreme Court bearing on the points in issue and has ultimately held

that writ cannot issue against an order of a subordinate tribunal within the jurisdiction of a Court when that order has become merged in the orders of outside authorities who are not amenable to the Court's jurisdiction.

There is no dispute that the Labour Appellate Tribunal had its Headquarters only at Madras and passed the appellate order also at Madras and as such, the said tribunal is not amenable to the jurisdiction of this Court and therefore the principles laid down by this Court in O. P. 278/56: Arthur Import and Export Co. Vs. Collector of Customs, Cochin and Others, will, therefore, apply.

6. Faced with this decision which is directly against the petitioner, Mr. Balagnnadhara Menon, learned counsel for the petitioner, attempted to argue that there are certain special circumstances in this case which did not arise for decision in the said O. P. referred to above. He relied upon Section 9(9), and Section 16 of the Industrial Disputes (Appellate Tribunal) Act 1950-Central Act XLVIII of 1950.

According to the learned counsel, u/s 9 (9), the Appellate Tribunal is to send a copy of its decision to the Industrial Tribunal concerned and to the appropriate Government as soon as practicable within one week from the date of the decision. Therefore, the learned counsel contended that the Labour Appellate Tribunal of India, Madras having sent a copy of its decision to this State, that order can be interfered with by this Court under Article 226 of the Constitution.

7. Section 16 of the said Act states that where on appeal from any award or decision of an Industrial Tribunal, the Appellate Tribunal modifies in any manner whatsoever that award or decision, the decision of the Appellate Tribunal shall, when it became enforceable u/s 15, be deemed to be substituted for that award or decision of the Industrial Tribunal and shall have effect for all purposes in the same manner and in accordance with the same law under which the award or decision of the Industrial Tribunal was made as if the Industrial Tribunal made the award or decision as modified by the decision of the Appellate Tribunal.

According to the learned counsel again, under this section the appellate order of the Labour Appellate Tribunal wherever constituted, ultimately becomes by virtue of this section the award or decision of the Industrial Tribunal which is situated within this State and as such, it may be quashed as the award made by a tribunal situated within the jurisdiction of this Court.

8. In our opinion, Section 9 (9) cannot help the petitioner because the mere sending of a copy of the decision to the Industrial Tribunal and to the Government by an Appellate Tribunal situated outside the jurisdiction of this Court will not give jurisdiction to this Court to interfere with the appellate order. Further, such a contention is also opposed to the clear provisions of Article 226 of the Constitution.

9. Regarding Section 16 of Central Act XLVIII of 1950, it is not necessary at all for us to consider its scope and effect in these proceedings, because that section

only provides for a case where the Appellate Tribunal modifies in any manner the award or decision of the Industrial Tribunal. In this case, there is no dispute that there has been no modification whatsoever by the Appellate Tribunal. The order of the Industrial Tribunal, Ernakulam, has been confirmed in toto by the Labour Appellate Tribunal of India, Madras. Therefore, it is unnecessary to go further in this matter and Section 16 has no application whatsoever in this case.

10. Mr. Balagangadhara Menon next contended that the order of the Industrial Tribunal is void as one passed without jurisdiction and therefore it is, open to this Court to quash the same irrespective of the order of the Labour Appellate Tribunal of India, Madras. The Industrial Tribunal had jurisdiction to go into the matter raised before it and it has exercised its jurisdiction, in our opinion, properly. Whether its decision is right or wrong has been canvassed before an appellate Court which has confirmed the decision of the Industrial Tribunal. There is no lack of jurisdiction in the Industrial Tribunal and we are not satisfied that the order passed by that Tribunal is in any way without jurisdiction or void ab initio.

11. We may also state that Mr. Balagangadhara Menon referred us to the decision of the Andhra Pradesh High Court reported in *Vijayavada City Bus Operators' Union v. Industrial Tribunal, Visakhapatnam*, 1958 Lab LT 17. There, Mr. Justice Bhimasankaran has no doubt, referred to Section 16 of Central Act XLVIII of 1950. But in the view that we take about the non-applicability of Section 16 in the present case as indicated above, it is unnecessary to refer to that judgment any further.

12. All the contentions of Mr. Balagangadhara Menon fail and the decision of this Court in O. P. 278/56; *Arthur Import and Export Co. Vs. Collector of Customs, Cochin and Others*, directly applies to this case. In view of the fact that the doctrine of merger applies and this Court has no jurisdiction to consider the correctness or otherwise of the order of the Labour Appellate Tribunal of India, Madras, confirming the order of the Industrial Tribunal, Ernakulam, the main relief asked for cannot be granted. The other reliefs asked in consequences cannot also be granted.

13. In the result, this application fails and is dismissed with costs to the third respondent.