

(2014) 09 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 3900 of 2010 (J)

Quilon District Motor and Mechanical Workers Union

APPELLANT

Vs

A.A. Kahar

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25F, 25FF

Citation : (2014) 09 KL CK 0095

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.B. Suresh Kumar, Senior Advocate, Leo George, K.P. Sujesh Kumar and K.N. Sasidharan Nair, Advocate for the Appellant; B. Suresh Kumar, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner, a representative Union of workers, is before this Court challenging Ext. P7 Award of the Labour Court, Kollam. The petitioner as can be seen from the Award, represented six workmen whose denial of employment was the question referred for consideration before the Industrial Tribunal. In the course of the proceedings, the Union itself represented before the Tribunal that the cause of one of the workmen was not being agitated. Hence, the Labour Court confined the adjudication to that of five persons excluding one M. Rajasekharan referred to in the reference order itself.

2. The contention raised before this Court by the learned counsel appearing for the petitioner is that the Tribunal has gone beyond the bounds of its authority as indicated in sub-section (4) of Section 10 of the Industrial Disputes Act and considered matters which were not referred for its consideration. The learned counsel for the petitioner would contend that the question referred was with respect to the illegal termination of employment and what was answered was the reasons behind the stoppage of the industrial establishment. This, according to the learned counsel, would go against the dictate of subsection (4) of Section 10; as also against the dictum of the decision of the Honourable Supreme Court

reported in Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, .

3. Considering the contention raised, one has to first notice the question referred and the issue raised by the Labour Court. The question referred was as follows:-

"Whether the Proprietor of Aurora Engineering Centre, Umayanalloor, Kollam has denied employment to Workmen namely Sri. V. Suresh Babu, Sri. A. Thangal Kunju, Sri. K. Asokan, Sri. S. Siyad, Sri. M. Rajasekharan and Sri. N. Ajmen by stoppage of work ? If not, what relief is entitled to them?"

4. After noticing the rival contention, the Labour Court framed the following points for consideration.

1. Whether the Management stopped the functioning of Aurora Engineering Centre to deny employment to the Workmen mentioned in the reference.

2. If so what is the relief if any entitled to by those Workmen.

5. This Court would attempt to first understand whether the contention raised by the petitioner that the Tribunal went beyond the dictate of the statute is correct.

6. As can be seen, the question referred was the denial of employment of workmen by stoppage of work and if such a denial is found; then the relief the workmen are entitled to. It was in this context that the Labour Court framed the above two issues for consideration. The reference in fact, definitely was on the denial of employment by stopping the work in the establishment. It was hence, the first issue was raised which was as to whether the stoppage of work was solely intended at denying employment to the workmen. This Court cannot understand the said issue to be beyond the order of reference or beyond the powers conferred on the Labour Court under sub-section (4) of Section 10.

7. The facts in Pottery Mazdoor Panchayat (supra) indicate that the specific question referred was with respect to the "propriety and justification of the closure of business". It was the admitted position that there was closure of business and the issue referred was the propriety and justification of such closure. Two such references were made, of two industries under the same Management; but the industries being respectively covered under the State and Central Statutes. Two different Tribunals answered the question somewhat contrary to each other. The Central Government Industrial Tribunal held that it had no jurisdiction to look at whether the decision of the Management, to close down the business, was proper and justified, but that it was entitled to consider whether in fact the business was closed. The State Industrial Court however held that there was no jurisdiction conferred on the Court to either enquire into the propriety of the closure or consider whether there was a real closure or not; the latter finding on the basis of the specific terms of reference. The Honourable Supreme Court upheld the finding of the High Court that when the specific issue referred was the propriety and justification of closure of business, the Tribunal could not have gone into the consideration of the issue as to whether a closure was made or not or whether the closure was a pretense to lock out the workmen.

8. Such a conflict does not arise in the present case. As was noticed earlier, "denial of employment by stoppage of work" was the specific question referred and the Tribunal considered the same re-framing the issue as whether the Management had stopped functioning of the establishment with the sole intention to deny employment. The issue framed hence was quite within the question referred for adjudication. The question referred was whether the stoppage of work was a mere pretense to deny work to the workmen. Hence the sustainability of stoppage of industry assumes relevance.

9. The Industrial Tribunal had first considered the issue of the denial of employment or to put it more fittingly, the question of stoppage of establishment. The Union's contention was stoppage of industrial establishment was only for the purpose of denying work to the petitioners' workmen, on which contention the reference was made. Before the Labour Court, the Union took up a contrary contention that in fact the Management had continued the establishment in a different name; carrying on identical activities. No evidence was adduced to that end. The Management, on the contrary, declined any such functioning of the industrial Unit and contended that the Unit had to be stopped due to the intermittent strikes indulged in by the workmen and the illegal demands raised by their Union.

10. The Management contented that the industrial park, in which the establishment was commenced did not have the necessary infrastructure facilities and considerable difficulty was faced in getting orders and carrying on the operations of the industry. Even though, the Management had certain orders during the period from 1993-94, the Management employed the workmen only on a daily wage basis as is evidenced at Ext. M1. Due to the intermittent strikes and the declining orders, the industry had to be eventually stopped. The Management was not able to satisfy the orders received due to the recalcitrant attitude of the workmen, which led to there being no orders at all. The stoppage of the industry hence, was found by the Tribunal on facts, to be not with any ulterior motive as alleged by the Union but only on account of the non availability of work.

11. With respect to the denial of employment, it is the contention of the learned counsel for the petitioner, that the Court found abandonment of work, by the workmen, without any evidence. Looking at the order, it cannot be said that the Labour Court found abandonment of work. In the circumstances of the clear finding that stoppage of the establishment was for bona fide reasons, beyond the control of the employer; the Court held that there could be no question of reinstatement. It was in this context that the Labour Court went ahead and considered the question of compensation entitled to the workmen.

12. What is to be emphasized is that, though the workmen had a specific contention of employment for various periods, none of them had specifically stated as to the date from which each of them had been employed by the Management. The workmen respectively claimed service of various periods

between 10 to 20 years, which claims were found to be inconsistent in the claim petition and the rejoinder. The Labour Court found that there can be no order passed on the basis of such assertion which stood unsubstantiated.

13. Looking at the discussion made by the Labour Court, on the evidence placed before it, it is seen that the Management did not deny the employment of the workmen. The Management had in fact produced the register showing the remittance under the Employees State Insurance Act (ESI Act) and the returns of the contribution under the Act. The said register had entries from 1993-1994 and all the workmen were seen to have been employed for various periods in very many years beyond 240 days of continuous service; but only from 1993-94.

14. Referring to Ext. M1 register, it was also found that, increasingly the dates on which the workmen were employed were reduced. At least from 1993-94 when Ext. M1 register commences, the contributions made to the ESI Corporation was found to indicate that the workmen was employed on daily wages, but for various periods, some of which periods exceeded 240 days continuous engagement. Since the employment was admitted and the Management had employed the petitioners for more than 240 days continuously in an year, at least after 1993-94, the Labour Court found that the workmen are entitled to compensation under Section 25FF of the Industrial Disputes Act, which; workmen are entitled to, on closure of a business the compensation of which had to be made ordinarily under Section 25F.

15. In considering the question of compensation, the Labour Court also found that since the closure of the undertaking was due to unavoidable circumstances, the workmen would be entitled to only closure compensation. This Court under Article 226 of the Constitution of India, while examining the Award of the Labour Court, cannot enter into any re-appreciation of evidence to enter into a finding contrary to that found by the Labour Court. The contention raised by the petitioner being of exceeding the jurisdiction, though attractive, has been negated by this court. This Court does not find any perversity in the orders passed nor in the appreciation of evidence. Ext. P4 does not warrant any interference.

The writ petition hence stands dismissed, leaving the parties to suffer their respective costs.