
(2000) 04 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16668 of 1998

Secretary, Irrigation and CAD Department, Hyd.

APPELLANT

Vs

K. Vijayakumar and another

RESPONDENT

Date of Decision : 19-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25

Citation : (2000) 3 ALD 627 : (2000) 3 ALT 147 : (2000) 86 FLR 276

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Government Pleader, for Irrigation, for the Appellant; Mr. P. Venkateswara Rao, for the Respondent

Judgement

1. This writ petition is filed by the State Government and its authorities against the award dated 31-3-1997 passed in ID No. 169 of 1994 on the file of the Labour Court III, Hyderabad. By the impugned award the Labour Court set aside the termination of the services of the petitioner with effect from 6-10-1987 and directed reinstatement of the petitioner into service with continuity of service, seniority and all other benefits. However, the Labour Court denied back wages to the petitioner. The facts that led to filing of the ID No. 169 of 1994 before the Labour Court be stated briefly as under: The petitioner was originally appointed on 21-1-1983 as Work Inspector (N.M.R.) in Nagarjunasagar Left Canal Organisation, Stores Division at Miryalaguda. Further, by the Proceedings No.LC/3.IV(1) 4401/87(A)-4, dated 16-4-1987 the Chief Engineer Nagarjunasagar Left Canal Organisation transferred the petitioner to Srisailem Left Bank Canal Organisation (for short "SLBC"). When the petitioner was serving in the Srisailem Left Bank Canal Organisation the Executive Engineer, SLBC Division (Stores) G.V. Gudem, Nalgonda issued Proceedings No.33S dated 6-10-1987 declaring that the first respondent and certain others ceased to be on the rolls in the SLBC Stores Division. According to the first respondent, when he reported to the Officer on special duty, Telugu Ganga Project, Srikalahasti, as directed by the proceedings of the Executive Engineer, SLBC Stores Division, G.V.

Gudem, Nalgonda dated 6-10-1987, the Special Officer on duty, Telugu Ganga Project, Srikalahasti orally told the first respondent that he would be appointed as a fresh casual labour and, therefore, that proposal of the Special Duty Officer was not acceptable to the first respondent. In the circumstance, the first respondent and twenty similarly circumstanced NMRs., filed WP No.16836 of 1987 in this Court, praying for a direction to the respondents to continue the petitioners therein in service in their respective posts on the same wage rates and on the same terms and conditions of service as are applicable to the workmen of the same categories of the petitioners employed in the Srisailem Project. In the said writ petition the first respondent herein was petitioner No.3. This Court disposed of that writ petition on 8-8-1991 directing the respondents therein to consider the claims of the first respondent herein and certain others in accordance with G.O.Ms.No.143 Irrigation (Ser.V) Department dated 16-3-1984 taking into consideration their dates of appointment. As per the directions of this Court, the Superintending Engineer, SLBC Division, G.V. Gudem, Nalgonda considered the claims of the first respondent and certain others, and by his Memo No.SE/ SL/SLBC/I/S2/A3/F22/768/M dated 23-9-1992 rejected the claims of the first respondent and certain others on the ground that none of them had completed five years of service and, therefore, the benefit conferred under G.O.Ms.No. 143 Irrigation (Ser.V) Department dated 16-3-1994 could not be extended to the first respondent and certain others. When the matter stood thus, the first respondent-workman instituted ID No.169 of 1994 in the Labour Court complaining that the petitioner-management terminated his services after he put in more than four years ten months of service without following the procedure prescribed u/s 25-F of the Industrial Disputes Act, 1947 (for short "the Act") and seeking the reliefs of reinstatement with continuity of service, attendant benefits and back wages.

2. Before the Labour Court, on behalf of the workman he examined himself as WW1 and marked ten documents as Exhibits Exs.W1 to W10. On behalf of the management, one Mr. Rama Seshadri, Deputy Executive Engineer was examined as MW1 and no documents were produced. The learned Presiding Officer of the Labour Court on consideration of the oral and documentary evidence recorded the finding that the services of the first respondent were terminated without following the procedure prescribed u/s 25-F of the Act. In view of that finding, the learned Presiding Officer of the Labour Court granted the reliefs, already noted above, to the first respondent-workman.

3. Assailing the validity of the impugned award, the learned Government Pleader appearing for the learned Advocate General would contend that the Labour Court ought to have dismissed the ID instituted by the first respondent on the ground of laches and delay. The learned Government Pleader would next contend that the Labour Court had no jurisdiction to entertain the ID instituted by the first respondent inasmuch as the proceeding of the Superintending Engineer, SLBC Circle No.1, G.V. Gudem, Nalgonda dated 23-9-1992 rejecting the claims of the first respondent and certain others became final in the absence of any challenge

to the same in any legal proceeding. The learned Government Pleader would also contend that the first respondent is guilty of suppressing material facts before the Labour Court and, therefore, ID was liable to be dismissed solely on that ground. On the other hand, the learned Counsel for the first respondent-workman would support the impugned award.

4. No doubt, the first respondent herein, was petitioner No.3 in WP No.16836 of 1987. In pursuance of the direction issued by this Court in the above writ petition, the claims of the first respondent as well as certain others were considered and rejected by the Superintending Engineer, SLBC Circle No.1, G.V. Gudem, Nalgonda on 23-9-1992, whereas ID was instituted before the Labour Court by the first respondent-workman on 21-7-1994. There was a delay of one year ten months in instituting the ID after the Superintending Engineer, SLBC Circle No.1, G.V. Gudem, Nalgonda passed the proceeding dated 23-9-1992. The explanation of the first respondent-workman for delay is that the copy of the proceeding of the Superintending Engineer dated 23-9-1992 was not communicated to him. Be that as it may, after hearing the learned Counsel, I am not inclined to interfere with the award solely on the ground that there was little delay on the part of the workman in instituting the ID. The delay of one year ten months, even assuming that the version of the workman is not correct, cannot be a weighty ground to deny the substantial relief to the workman solely on that ground.

5. There is no merit in the contention of the learned Government Pleader. Should it be noted at the threshold that there is no controversy between the parties as regards jurisdictional facts, which confer jurisdiction on the Labour Court. The petitioner is an "industry", the first respondent is a "workman" and the dispute between them is an "industrial dispute" within the meaning of those terms as defined under the Act. If these jurisdictional facts co-exist, it cannot be said that the Labour Court lacks jurisdiction to entertain the dispute brought before it by the workman, first respondent herein. Further, no plea was taken before the Labour Court contesting the claim of the first respondent that he is a workman. However, the learned Government Pleader at the time of argument would state that the first respondent could not be treated as workman within the meaning of the term as defined under the Act. This contention has no factual matrix in the pleading. In order to establish that an employee is not a workman within the meaning of that term as defined u/s 2(s) of the Act, certain facts have to be pleaded and established. In the instant case, there is a total lack on the part of the management to plead those facts in the counter-claim statement. The second contention is that since the Superintending Engineer, SLBC Circle No.1, G.V. Gudem, Nalgonda rejected the claims of the first respondent and certain others by his proceeding dated 23-9-1992, and since that proceeding remains unchallenged, the Labour Court lacks jurisdiction to entertain the ID instituted by the first respondent. This contention is totally devoid of any merit. Should it be noted that on an earlier occasion the first respondent and similarly circumstanced certain others filed WP No.16836 of 1987 seeking relief under

G.O.Ms.No.143 Irrigation (Ser.V) Department dated 16-3-1984, and this Court without deciding the entitlement of the petitioners therein to the relief sought therein, only directed the respondents to consider the cases of the first respondent herein and certain others in terms of G.O.Ms.No.143 Irrigation (Ser.V) Department dated 16-3-1984. Accordingly, the Superintending Engineer, SLBC Division, G.V. Gudem, Nalgonda by his proceeding dated 23-9-1992 considered the cases of the first respondent and certain others and rejected the same on the ground that none of them had put in five years qualifying service. I am at a loss to understand how that proceeding of the Superintending Engineer, SLBC Division, G.V. Gudem, Nalgonda would oust the jurisdiction of the Labour Court. The jurisdiction of the Labour Court and other adjudicatory Forums under the Act depends upon the existence of jurisdictional facts, which alone give jurisdiction to the adjudicatory Forums. If the person who institutes a dispute is a workman, the management against whom it is instituted is an industry and the dispute brought before the Labour Court is an industrial dispute within the meaning of those terms, undoubtedly, the Labour Court gets jurisdiction to entertain such dispute. Hence, the second contention is liable to be rejected and it is accordingly rejected.

6. Coming to the third contention of the learned Government Pleader, should it be noted at the threshold that non-disclosure of each and every fact is not a vitiating factor and on that ground, the Court cannot dismiss the writ petition. It is well settled that a party approaching the Court of law or adjudicatory Forum should disclose the relevant facts. In the first place, it may be noted that the proceeding of the Superintending Engineer, SLBC Division, G.V. Gudem, Nalgonda dated 23-9-1992 has no bearing to the decision to be taken by the Industrial Court. Secondly and alternatively, it may be noted that the first respondent-workman has marked the judgment delivered by this Court in WP No. 16836 of 1987 dated 8-8-1991 as Ex.W9 and a part of it is extracted in the award also. Thirdly, it is the case of the first respondent-workman that he was not served with a copy of the proceeding of the Superintending Engineer dated 23-9-1992. For all these reasons, the third contention of the learned Government Pleader does not deserve acceptance.

7. No other points are urged before the Court during the course of argument. Writ petition fails and it is accordingly dismissed with no order as to costs.

8. The learned Counsel for the first respondent-workman submits that the first respondent-workman is not yet reinstated into service. If that is so, the petitioners are directed to reinstate the first respondent into service forthwith.