
(2002) 03 AP CK 0078
In the Andhra Pradesh High Court
Case No : WA No. 649 of 2001

Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another APPELLANT

Vs

Presiding Officer, Industrial Tribunal-I, Hyderabad and Another RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4)

Citation : (2002) 2 ALD 462

Hon'ble Judges : S.R.K. Prasad, J; S.R. Nayak, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; K.G. Kannabhiram, for the Respondent

Final Decision : Partly Allowed

Judgement

S.R. Nayak, J.—The management of Hindustan Petroleum Corporation Limited (HPCL) has filed this writ appeal being aggrieved by the judgment and order of the learned single Judge dated 12-4-2001 in WP No. 15099 of 2000 dismissing the writ petition. In the writ petition, the management assailed the validity of the award dated 17-12-1999 passed by the Industrial Tribunal-I, Hyderabad in ID No. 20 of 1998. By the said award, the Industrial Tribunal directed the Management to regularise services of 26 workmen mentioned in Ex.W2 list against the existing vacancies applying rules of reservation in the order of seniority in the respective categories and if there are no vacancies, then to regularise their services as and when the vacancies arise. Further, the Industrial Tribunal directed that those 26 workmen are entitled to pay scales on par with regular employees with effect from 1-12-1999 and they should be paid arrears also.

2. In the writ petition, the Management has not only questioned the validity of the award passed by the Industrial Tribunal as regards the relief of regularisation

in services granted to 26 workmen, but also direction to the Management to pay wages to those 26 workmen in terms of pay scales on par with regular employees from 1-12-1999. Although in the writ appeal also, the management has questioned the validity of the award passed by the Industrial Tribunal in its entirety, as we could see from the Memorandum of writ appeal, at the time of argument, the attack of the learned Counsel against the award of the Industrial Court mainly against the part of the award directing the Management to pay wages to workmen concerned in terms of pay-scales on par with regular employees with effect from 1-12-1999 and not so much against the other part of the award directing regularisation of services of the workmen obviously because the management cannot have any legitimate grievance either in law or on facts against the award of the Industrial Tribunal directing regularisation of the services of the workmen. In our considered opinion, the findings records by the Industrial Tribunal as regarded the relief of regularisation are well-founded and they are based on acceptable substantive legal evidence and therefore, they do not call for any interference by this Court.

3. The main contention of Ms. Uma, learned Counsel for the Management before us is that the Industrial Tribunal in directing that the workmen are entitled to pay-scales on par with regular employees from 1-12-1999 went beyond the terms of reference as well as the points framed for adjudication and therefore, that part of the award is a nullity in the eye of law. The learned Counsel would point out that what was referred to the Industrial Tribunal for adjudication was whether the services of 26 workmen should be regularised or not and not the question whether those workmen are entitled to pay scales on par with regular employees from 1-12-1999. The learned Counsel would draw our attention to the points framed by the Industrial Tribunal in para (8) for determination and the two points raised by the Industrial Tribunal do not relate to the entitlement of the workmen to claim pay-scale on par with regular employees. The learned Counsel would alternatively contend that the question whether the workmen are entitled to pay-scales on par with the regular employees on the ground that the duties and functions discharged by them are similar to those performed by the regular employees, is a pure question of fact and such a question could be resolved only on the basis of the pleadings of the parties and the evidence that may be led by the parties in the trial and in the instant case, there was absolutely no opportunity for the management to show that the duties and functions performed by the workmen concerned are not similar to the duties and functions performed by the regular employees. Looking from that angle also, the learned Counsel would maintain, the direction to pay wages to the workmen concerned on par with regular employees cannot be sustained.

4. On the other hand, Sri K.G. Kannabhiran, learned senior Counsel appearing for the 2nd respondent union while supporting the award passed by the Industrial Tribunal as affirmed by the learned single Judge would contend that the direction to pay wages to the workmen concerned on par with the regular employees is a power available to the Industrial Tribunal under Sub-section (4) of Section 10 of

the Act because Sub-section (4) confers jurisdiction on the Industrial Tribunal not only to adjudicate upon those points referred to it, but also all matters incidental thereto. According to the learned senior Counsel, the question whether the concerned workmen are entitled to pay scales on par with regular employees from 1-12-1999 was an incidental issue before the Industrial Tribunal in deciding the term of reference and therefore in terms of Sub-section (4) of Section 10, it had the power to decide that question also and therefore, it cannot be said that the Industrial Tribunal in declaring that the concerned workmen are entitled to pay scales on par with regular employees from 1-12-1999 acted beyond terms of reference or without jurisdiction. The learned senior Counsel would also contend that though specific points relating to the entitlement of the workmen concerned to claim wages in terms of pay-scales applicable to regular employees was not framed by the Industrial Tribunal, the Management has had fair opportunity of leading evidence before the Industrial Tribunal to contest that claim. The learned Counsel would also maintain that even according to the Management, the duties and functions performed/discharged by the workmen concerned are similar to those performed/ discharged by the regular employees and in that view of the matter and in terms of justice also, no exception can be taken to the impugned direction. The learned senior Counsel would conclude that the doctrine of "equal pay for equal work" has come to stay as a constitutional creed flowing from Article 14 of the Constitution and that is what exactly the Industrial Tribunal has done in this case by declaring that the workmen concerned are entitled to pay-scales on par with regular employees with effect from 1-12-1999 is to translate that doctrine into a reality in the case of the workmen concerned and in that view of the matter, no case is made only by the Management to interfere with the order of the learned single Judge affirming the award passed by the Industrial Tribunal.

5. The learned senior Counsel would also contend that the High Court is not entitled to interfere with the findings of the Industrial Tribunal lightly. He placed reliance on the judgment of the Supreme Court in *Sadhu Ram v. Delhi Transport Corporation*, 1983 LAB IC 1516. The learned senior Counsel would contend that the Management should not be permitted to raise needless technical objections against the award of the Industrial Tribunal placing reliance on the judgment of the Supreme Court in *S.K. Verma v. Mahesh Chandra* 1983 (47) FLR 313 (SC). The learned Counsel would also cite judgment of the Supreme Court in *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , to contend that the workmen concerned are entitled to claim wages in terms of pay-scales applicable to the regular employees because the functions and duties performed by the workmen concerned and the regular employees are of the same quality.

6. Having regard to the contentions raised and submitted before us, the only question that arises for our decision is whether the Industrial Tribunal acted without jurisdiction in declaring that the workmen concerned are entitled to pay-scales on par with regular employees from 1-12-1999 or not.

7. Sub-section (4) of Section 10 of the Industrial Disputes Act, 1947 (for short "the Act") reads as follows:

" 10. Reference of disputes to Boards, Courts or Tribunals:

(1) xxxx

(2) xxxx

(3) xxxx

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be shall confine its adjudication to those points and matter incidental thereto."

8. The functions of an Industrial Tribunal are quasi-judicial but it is not a civil Court. It has not the inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by an order of reference. In other words, the Tribunal has to function within the limits imposed upon it by the Act and has to act according to its provisions. In adjudicating upon a "industrial dispute", the Tribunal cannot arrogate to itself powers which the Legislature alone can confer or do something which the Legislature has not permitted to be done. In *Rai Sahib Ramdayal Ghasiram Oil Mills Vs. The Labour Appellate Tribunal and Another*, and *West Bengal Press Workers and Employees Union Vs. Eighth Industrial Tribunal and Others*, , the Supreme Court held that the Industrial Tribunal acquires jurisdiction to adjudicate upon an "industrial dispute" only after it has been referred to it In other words, without such a reference, the Tribunal does not get any such jurisdiction to adjudicate upon any dispute. Wherein an order referred an industrial dispute to a Tribunal u/s 10(1) of the Act, the "appropriate Government" has specified the points of dispute for adjudication, the Tribunal shall confine the adjudication to those points and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its adjudication to the points specifically mentioned and anything which is incidental thereto. It is well settled that the order of reference by which an industrial dispute is referred to the Labour Court or Industrial Tribunal for adjudication gives jurisdiction to the Labour Court or the Tribunal, as the case may be, to deal with the merits of dispute. This position is well settled by the judgment of the Supreme Court in *Jhagrakhand Collieries (P) Limited v. Central Government Industrial Tribunal* [1960] II LLJ (SC), and several other judgments to follow. The jurisdiction of the Tribunal being limited to the matters referred to it by the Government, it would have no right to travel outside the reference, and proceed to adjudicate the matters not referred to it. This position is also well settled by a catena of decisions of the Apex Court including *Gouri Sankar Chatterjee v. Texmaco Limited and Ors.* 2000 (8) Sup 519, *Workmen of British India Corporation Limited v. British India Corporation Limited*

[1965] 11 LLJ 433 (SC), Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, the The Jaipur Udyog Ltd. Vs. The Cement Work Karmachari Sangh, Sahu Nagar, and Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees" Union, to cite a few.

9. An Industrial Tribunal is the creature of the Industrial Disputes Act. Sub-section (4) of Section 10 delineates the perimeter of the jurisdiction of the adjudicatory authorities viz., the Labour Court, the Industrial Tribunal or the National Tribunal to adjudicate. The word "jurisdiction" means authority to decide or the legal authority of a Court or Tribunal to do certain things. An Industrial Tribunal being creature of the Act, its jurisdiction is confined by the Act, thereby meaning that the Tribunal will have no jurisdiction, to adjudicate upon any dispute or lis to which the Act does not apply. Further, the jurisdiction of the Tribunal has been limited by the provisions of Section 10(4) to confine its adjudication to "the points specified in the order of reference and matters incidental thereto." Where by reason of any limitation imposed by statute, a Tribunal lacks jurisdiction to entertain any particular matter, neither acquiescence nor consent of the parties can confer jurisdiction on it. In other words, a party cannot confer jurisdiction where it does not exist because no amount of consent, acquiescence or waiver can create it or confer it. Nor can a party take away the jurisdiction of the Tribunal by way of objection where it exists. In The United Commercial Bank Ltd. Vs. Their Workmen, Kama, CJ., speaking for the Supreme Court observed:

"Nor can consent give a Court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. No appearance or consent can give a jurisdiction to a Court of limited jurisdiction which is does not possess. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect. The distinction clearly is between the jurisdiction to decide matter and the ambit of the matters to be heard by a Tribunal having jurisdiction to deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. When however the question is of the jurisdiction of the Tribunal to make the award no question of acquiescence or consent can affect the decision."

Further, Fazal Ali, J., observed:

"Consent cannot give jurisdiction in respect of subject-matter though it might cure a mere irregularity."

The jurisdiction of the Industrial Tribunal being by virtue of the Act and limited by the terms of reference u/s 10, it would not be open to the workers and the management to confer jurisdiction upon the Tribunal on a question not covered by the reference. The mere fact that an objection was not taken before the Tribunal, would not give its jurisdiction if it inherently had no jurisdiction. An

Industrial Tribunal is not a Court of general or residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the orders of reference. In other words, it is an ad hoc Tribunal with ad hoc jurisdiction to determine specific industrial disputes. The Tribunal has to confine itself to the pleadings and the issues arising therefrom and it is, therefore, not open to it to fly off at a tangent disregarding the pleadings and reach any conclusion that it thought as just and proper, as held by the Supreme Court in *Parry and Co. Ltd. Vs. P.C. Pal and Others*, .

10. It is true that under the Act the Labour Court and the Tribunals have full powers to adjudicate upon all matters in dispute between the employers and workmen and give adequate relief. But, at the same time, it should be remembered that a Labour Court to a Tribunal cannot grant relief not claimed by workmen. Likewise, it will have no jurisdiction to award relief in excess of the demand of workmen, nor can it grant relief with respect to disputes not referred to it. In *Delhi Cloth and General Mills Company Limited v. Its Workmen* (supra), the Supreme Court held that the Industrial Court cannot grant relief to workmen with respect to disputes not referred to it because it cannot proceed to adjudicate disputes not referred.

11. In the instant case, the Government of India, Ministry of Labour, New Delhi, by its order No. L-30012/128/97-IR (Coal-I), dated 30-6-1998/4-8-1998, made a reference of an industrial dispute u/s 100(1)(d) of the Act to the Industrial Tribunal for adjudication, existing between the Management and its trade union. The term of reference is as follows:

"Whether the action of the Management of Hindustan Petroleum Corporation, Hyderabad in not regularising the services of casual labourers, who have been working for more that 12 to 17 years continuously is justified? If not, to what relief they are entitled to ?"

12. As could be seen from the above order of reference, it does not refer to the entitlement of the workmen concerned to pay scales on par with regular employees either from 1-12-1999 or prospectively. The term of reference is restricted to the entitlement of the casual labourers to seek regularisation of their services having served the Management for more than 12 to 17 years continuously. Further, it needs to be noticed that on the basis of the claim statement and counter claim statement filed before it, the Industrial Tribunal framed the following two points for determination. They are:

(1) Whether this Tribunal has jurisdiction to entertain the reference and whether the present reference is maintainable?

(2) Whether the casual labourers are entitled to for regularisation?

Thus, it can be seen that the Industrial Tribunal has not framed any point for determination with regard to the entitlement of the workmen concerned to wages on par with regular employees with effect from 1-12-1999. In that view of the

matter, it is quite clear that neither the term of reference nor the points framed by the Industrial Tribunal for determination would encompass the claim of the workmen concerned to pay scales on par with regular employees. If that is so, the next question to be considered is whether the workmen entitled to pay scales on par with the regular employees is an incidental issue that arose for determination before the Industrial Tribunal and therefore, the Industrial Tribunal has the jurisdiction to pronounce upon the said claim of the workmen. It is the contention of the learned senior Counsel that once the Industrial Court grants the relief of regularisation of services, the workmen concerned are also entitled to incidental right flowing from such a relief such as entitlement to wages in terms of pay scales applicable to regular employees.

13. The word "incidental" is nowhere defined under the Act. Therefore, the word "incidental" has to be understood on the basis of how it is understood in ordinary parlance. According to Webster's New World Dictionary, the word "incidental" means, "Happening or likely to happen as a result of or in connection with something more important: being an incident, casual, hence, secondary or minor, but usually associated". In *Delhi Cloth and General Mills Company Limited v. Their Workmen* (supra) Mitter, J speaking for Supreme Court observed:

"Something incidental to a dispute must, therefore, mean something happening as a result of or in connection with the dispute or associated with dispute. The dispute is a fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct?"

A point is incidental to another point when the former necessarily depends upon the other. The word "incidental" implies a subordinate and subsidiary thing related to some other main or principal thing requiring casual attention while considering the main thing. Therefore, it is obvious that the matters which require independent consideration or treatment and have their own importance, cannot be considered as "incidental". The words "matters incidental thereto" occurring in Sub-section (4) of Section 10 of the Act should not be interpreted so as to give vague and indeterminate jurisdiction to the Labour Court and the Tribunal, especially over independent matters as held by the Supreme Court in *Workmen of British India Corporation Limited v. British India Corporation Limited* ("supra"). In *Express Beedi Factory v. Its Workmen* [1960] 1 LLJ (Mad), the question referred to the Tribunal was related to "leave", "wages", etc. which question could arise only in a going concern. The Tribunal, however, found that the concern had closed down before it started the proceedings, and awarded compensation for closure u/s 25-FFF, a point referred to it. The Madras High Court held that the jurisdiction of the Tribunal being confined to the matters referred to it by the Government, it would have no right to travel beyond the reference and to proceed to adjudicate upon matters not referred to it. The Madras High Court further held that the fact that the Tribunal proceeded at the invitation of the parties would make no difference to the competence of the

Tribunal to adjudicate upon the question. In *DCM Chemical Works v. Its Workmen* [1962] 1 LLJ 338, where the reference read as "whether leave facilities should be increased, and if so, to what extent?" the Supreme Court held that the Industrial Tribunal would have no jurisdiction to fix the quantum of festival holidays, as it would be beyond the ambit of the reference "holidays" being entirely different from "leave facilities". In *Hukumchand Jute Mills Limited v. Labour Appellate Tribunal* [1959] II LLJ 595 (Cal.), the question referred to the Tribunal was whether a workman should be reinstated. The Tribunal found that he was not entitled to be reinstated but a matter "incidental" to the dispute, it awarded certain compensation to the workman. The Labour Appellate Tribunal not only confirmed the decision of the Industrial Tribunal but also increased the quantum of compensation. In writ proceedings the Calcutta High Court that where a specific issue is referred, the Tribunal must confine itself to that issue and it is not called upon to exercise general jurisdiction and adjust all dispute between the parties. It was further observed that compensation for wrongful dismissal or loss of service is a completely different thing and therefore, the matter decided was neither "incidental" nor related to the dispute referred. In *Workmen of Bengal Electric Lamp Works Limited v. Bengal Electric Lamp Works Limited* [1958] I LLJ 571 (Cal.), in a reference the question was as to what should be "the service conditions of 59 female workers." Before the Tribunal, the workers claimed that the wages should be paid retrospectively. The Tribunal rejected the demand for "retrospective" wages. In writ proceedings against the award of the Tribunal, the High Court observed that on proper construction the expression "incidental matters" refers to prospective not retrospective matters, unless the actual terms of reference indicate either expressly or by compelling and necessary implication and give jurisdiction to the Tribunal to pass orders retrospectively.

14. In the light of the well settled principles emerging from the decided cases, what has to be seen by us in this writ appeal is whether the declaration made by the Industrial Tribunal that the workmen concerned are entitled to pay-scales on par with regular employees with from 1-12-1999 could be said to be a decision of the Industrial Tribunal on a matter incidental to the point referred to it by the Government of India. It cannot be gainsaid that the relief of regularisation and relief to claim wages on par with regular employees are two independent legal remedies. The considerations which go into the decision-making in granting these two reliefs would also vary. The relief granted to the workmen that they are entitled to pay-scales on par with regular employees is undoubtedly is on the assumption that the workmen concerned did/do discharge same functions and duties attached to the regular post. The question whether it is so or not, it is trite, is an incidence of fact. In the first place, the Central Government has not referred the dispute relating to entitlement of the workmen concerned to pay-scales on par with regular employees. Secondly, the question whether workmen concerned perform same duties and functions on par with regular employees, being a question of fact, such a question shall be resolved only by permitting the

parties to adduce evidence and after appreciation of such evidence. Thirdly, even in the course of adjudication of the reference, the Industrial Tribunal though chose to frame points for adjudication/determination did not frame the point relating to the entitlement of the workmen concerned to pay-scales on par with regular employees. In *State of Haryana Vs. Jasmer Singh and others*, commenting upon the principle of "equal pay for equal work", the Supreme Court has opined that that principle is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organisations, or even in the same organisation; the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders of office or post bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. Therefore, we are of the considered opinion that Industrial Tribunal has exceeded its jurisdiction in declaring that the workmen concerned are entitled to pay-scale on par with regular employees particularly because that was not a term of reference and further the Tribunal itself did not frame any issue relating to that entitlement of the workmen.

15. Although Sri K.G. Kannabhiran, learned senior Counsel cited some decisions to impress upon us about the intendment of the Directive Principles of State Policy and the constitutional rights of the labour, perennial exploitation of the labour class treating them as daily wagers etc., we do not find it necessary to deal with those contentions in view of the settled position in law and in view of our considered opinion that the question whether the workmen are entitled to pay-scales on par with the regular employees with effect from 1-12-1999 is not an incidental issue arising out of the point referred to the Industrial Tribunal for adjudication by the Government of India.

16. In the result and for the foregoing reasons, we allow the writ appeal in part and set aside the order of the learned single Judge dated 12-4-2001 in WP No. 15099 of 2000 and the award dated 17-12-1999 made in ID No. 20 of 1998 insofar as the impugned award of the Industrial Tribunal declares that the 26 workmen concerned are entitled to pay-scales on par with regular employees with effect from 1-12-1999. We make it very clear that in all other respects, the award of the Industrial Tribunal shall stand. No costs.