

(2001) 09 AP CK 0142

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1145 of 2001

Singareni Collieries Workers Union and Another

APPELLANT

Vs

Singareni Collieries Co. Ltd.

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 36A, 9A

Citation : (2002) 3 ALT 38

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

Bench : Division Bench

Advocate : A.K. Jayaprakash Rao, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Dismissed

Judgement

Satya Brata Sinha, C.J.—Whether a Tradesman has a right to have the assistance of a Helper or an Attender as a condition of service is the question, which arises of consideration in this appeal.

2. The writ petitioners are the appellants. They filed a Writ Petition praying for the following relief:

To call for the records from the respondent and issue an appropriate writ, order or direction, particularly one in the nature of Writ of Mandamus declaring that the Circular No. P.S./ 5934/IR/1515 dated 4-7-2001 issued by the respondent as illegal, unjust, contrary to law, in violation of the principles of natural justice and in violation of Section 9-A of the Industrial Disputes Act and grant all consequential benefits.

3. Appellant No. 1 is a recognised workers union of the respondent-organisation. Appellant No. 2 is working as Electrician in the Company. According to the appellants, every fitter and electrician working in Hand Section Mines were given helpers in the discharge of their duties. But, the respondent has withdrawn the said system by the circular dated 4-7-2001 contrary to the Memorandum of

settlement dated 21-2-2000 and also Section 9-A of the Industrial Disputes Act.

4. The case of the respondent is that there was only shifting of helpers from one department or section to other and that such shifting is being enforced pursuant to 1975 settlement u/s 12(3) of the Act and as such there was no violation of the statutory provisions.

5. The learned Single Judge dismissed the writ petition holding that no notice in terms of Section 9-A of the Act was required to be issued as the appellant - union was a party to the settlement and such settlement or award is an exception to proviso (a) of Section 9-A of The Act.

6. Mr. A.K. Jayaprakash Rao, learned Counsel appearing on behalf of the petitioner, inter alia, submitted that the learned Single Judge proceeded on a wrong premise insofar as it was held that the petitioner had consented to the changes made by the employer in the conditions of service. The learned Counsel would contend that a practice being followed for a number of years would be a condition of service within the meaning of Section 9-A of the Act and thus failure to issue notice would vitiate the entire proceedings. Strong reliance in this connection has been placed on the decisions of the Apex Court in *Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd. Vs. Indian Hume Pipe Co. Ltd.*, Bombay, , *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad* 1999 SCC 1090, the decision of the Madras High Court in *Voltas Volkart Employees Union Vs. Voltas Limited*, and decision of this Court in *G. Marutiah v. A.P.S.E.B.* 1985 (2) ALT 120 (NRC).

7. Mr. Srinivasa Murthy, learned Counsel appearing on behalf of the respondent on the other hand would submit that by reason of the action of the employer in the writ petition, no existing right has been taken away. It was submitted that, in any event, such right, even according to the petitioners arose out of a settlement and in that view of the matter, Section 9-A of the Act would not apply if it is covered by a settlement.

8. The impugned circular dated 4-7-2001 issued by the respondent-Company reads as follows:

The practice of attaching Helpers to the Tradesmen was discontinued by a Memo of settlement-dated 18-9-1975 wherein it was agreed that there shall be no designation of Helper attached to the Tradesmen. However on the representation of the Unions during 1979, it was agreed to provide a Mazdoor or Apprentice to the Electrician/Fitter in the shift. It was also made clear that the pattern of provision of Mar or Apprentice to Tradesman shall be on the same basis as was in vogue when Helpers were provided to Tradesmen and not beyond that. It may be noted that earlier to September, 1975 one Electrician and one Fitter in charge of shifts in the Mines were given Mazdoor or Helper to assist them.

It has been reported, that in some of the areas, all the Fitters and Electricians are provided with Helpers, Category-II or General Mazdoor as Helper in

contravention of the above norm.

The need to provide Helper/Mazdoor to Fitters and Electricians as per the norms has been discussed with Recognised Union on several occasions and it was impressed on them the imperative need to adhere to the norms in the matter of providing Helpers to Fitter and Electrician in the Mines.

The matter has been reviewed and it has been decided to provide Helper to Fitter and Electrician in the Hand Section Mines as Under:

(i) One Helper to be given to one Electrician and also one Helper to one Fitter who are in charge of the shift.

(ii) One Helper to be given to one Electrician and also one Helper to one Fitter who are in charge of the General shift.

(iii) In case of urgency, Mine Manager may give helper (s) to a fitter or an Electrician to meet special emergency situations in that shift(s).

Helpers provided over and above the norms may please be withdrawn with effect from 9-7-2001.

Action may please be taken accordingly.

9. Admittedly, a settlement was arrived at by and between the Management of the Company and the employees of the company on or about 21-2-2000. Item No. 27 of the said settlement is in the following terms:

Stop proposed alteration/change of the following existing practices and facilities:

(a) Withdrawal of Helpers to Tradesmen provided over and above norms.

(b) Following shift timing in Opencast Projects, as has been the practice in Coal India Limited.

(c) Proposed to have common designation as Support man Cat. II

(d) Recovery of Electricity charges from the workers residing in Company's quarters.

It is hereby agreed that the management will not bring any change in respect of the above issues without prior discussion with the union.

10. It is, therefore, evident that by reason of the impugned circular dated 4-7-2001 only such helpers provided over and above the norms are required to be withdrawn. By reasons of the said circular, therefore, the existing right of the electrician or fitter had not been taken away.

11. Conditions of service in Industrial establishment has definite connotation. The same has been enumerated in the Fourth Schedule appended to the Industrial Disputes Act.

12. A notice is required to be issued in terms of Section 9-A while effecting a

change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule.

13. There cannot be any doubt whatsoever that before any change in conditions of service of a workman is to be effected a notice u/s 9-A has to be issued. But the statutory provision itself lays down certain exceptions thereto. The proviso (a) appended to Section 9-A clearly states that no notice is required to be issued where change is effected in pursuance of any settlement or award. Interpretation of an award can be subject matter of determination at the hands of the Central Government in terms of Section 36-A of the Act. The Central Government may alone take such steps in terms of Section 36-A of the Act.

14. The respondent-Company proceeded on the basis that the practice of attaching Helpers to the Tradesmen was discontinued by reason of settlement-dated 18-9-1975. The circular dated 4-7-2001 shows that the matter was discussed with the recognised union on several occasions. According to Item 15 of the Memorandum of Settlement dated 18-9-1975, the appellant-Union agreed that there would be no post having designation of Helpers attached to (SIC)esmen.

15. Pursuant to a resolution adopted in a meeting held with recognised Union, a Memorandum of Settlement had been arrived at on 21-6-2001. There are 12 items in the said memorandum and the issue of withdrawal of helpers to the fitters and electricians doesn't find place therein. In the said statement, however, it has been stated:

The Union has not pressed for the rest of the demands which have not appeared in the above Terms of Settlement and the same will be taken up by it separately.

16. Furthermore, it appears that the General Manager (Personnel) of the Company by letter dated 4-7-2001 addressed to the Secretary of the Union stated:

This is to inform that as per norms and need basis, Helpers are to be provided to One Fitter and One Electrician in charge of the shifts in hand section underground mines. But in some of the areas, Helpers/General Mazdoors are being given to all the Fitters and Electricians whether or not needed in deviation of the laid down norms. This is resulting in wastage of manpower.

It is necessary that such Helpers/ General Mazdoors provided to Fitters and Electricians over and above the norms should be withdrawn for effective and gainful utilisation of manpower. This issue was discussed with the Recognised Union in the structured meeting held on 29th and 30th March, 2001 and your cooperation was sought for the above proposal of the Management.

This issue was subsequently discussed with you as it is one of the demands contained in the strike notice dated 20th April, 2001 and the need to withdraw the Helpers/General Mazdoors provided to Fitters and Electricians over and above norms was explained to you.

This matter has been further examined and it has been decided to provide Helpers to Fitter and Electrician as under 9-7-2001 in Hand Section underground mines:

(i) One Helper to be given to one Electrician and also one helper to one Fitter who are in charge of the shift.

(ii) One Helper to be given to one Electrician and also one helper to one Fitter who are in charge of the General shift.

(iii) In case of urgency, Mine Manager may give helper (s) to a Fitter or an Electrician to meet special emergency situations in that shift(s).

You are requested to extend your cooperation to the Management in this regard so as to utilise the manpower gainfully on productive jobs to increase the production and productivity, which is the need of the hour.

17. From the above, it is clear that providing of helpers to fitters and electricians has not been totally withdrawn. The question as to how many helpers are required in a section in the exigencies of the situation may or may not be a condition of service. We do not intend to enter into the merit of the matter having regard to the fact that the appellants herein have alternative remedy for redressal of their grievance.

18. The decisions cited by the learned Counsel for the appellants cannot be said to have any application in the instant case.

19. In *Workmen, Wadala Factory* case (1 supra) the issue before the Supreme Court was whether change in the slab system of D.A. after 18 years would be treated as a condition of service. In *Lokmat Nevspapers* (2 supra), the question which arose for consideration before the Apex Court was whether the proposed scheme of rationalisation, standardisation or improvement of plant or technique was a change in condition of service. In *Voltas Volkart Employees Union* (3 supra) the issue that fell for consideration before the High Court of Madras was as regards grant of public holidays. In *G. Maruthaih v. AP.S.E.B.* (4 supra), this Court was dealing with the issue whether creation of two new posts between Security Guards and Head Security Guard would amount to change in condition of service.

20. In our consideration opinion, the above decisions have no application to the facts of the present case as the said cases have arisen in different fact situations and circumstances. As already noticed, there was no total withdrawal of the practice of providing helpers to the fitters and electricians.

21. For the reasons aforesaid, we find no merit in the appeal and it is accordingly dismissed. No order as to costs.