
(2002) 04 AP CK 0054
In the Andhra Pradesh High Court
Case No : WA No. 1372 of 1997

State Bank of India

APPELLANT

Vs

Industrial Tribunal, Hyd. and Another

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25F

Citation : (2002) 3 ALD 99 : (2002) 94 FLR 1030

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

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; C. Suryanarayana, Govt. Pleader for Labour, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This writ appeal filed by the Management of the State Bank of India is directed against the order of the learned single Judge dated 23-8-1996 in WP No. 193 of 1987.

2. The workmen of the State Bank of India, Region II, Vijayawada sought reference of the following industrial dispute to the Industrial Tribunal, Hyderabad for adjudication u/s 7-A read with Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short "the Act").

"Whether the action of the management of State Bank of India, Region-II, Vijayawada in relation to their Vijayawada-I Branch in terminating the service of Sri Golla Vijayendra Rao, Waterman (vide corrigendum No. L-12012/197/83-D.II(A) dated 18-2-1984 from Government of India, Ministry of Labour, New Delhi) w.e.f. 28-6-1982 and not considering him for further employment while engaging a fresh hand in his place was justified ?"

3. The said industrial dispute was numbered as Industrial Dispute No. 2 of 1984. The case of the Union before the Industrial Tribunal, as set out in the claim statement, is that Sri Golla Vijayendra Rao was appointed as a waterman at the

Vijayawada-I Branch of State Bank of India on 19-4-1982 and his duties consisted of serving drinking water to the Bank staff and the customers who visit the bank; after he put in service of 60 days, his services were terminated from 28-6-1982 by oral orders. It was also alleged by the Union that after terminating the services of temporary and adhoc employees after 60 days or 90 days, the management of the Bank resorted to appointing others on similar terms. The management of the Bank in its claim statement stated that the services of Golla Vijayendra Rao were engaged only for a period of 70 days as a temporary waterman and after the said period was over, his services were terminated and he did not put in continuous service of 240 days.

4. The Tribunal, on appreciation of the oral and documentary evidence placed before it, has opined that the termination of services of the petitioner tantamounts to retrenchment within the meaning of that term as defined u/s 2(oo) of the Act and that he was retrenched without following the procedure laid down u/s 25-F of the Act. So opining, the learned Industrial Tribunal has declared that the termination of the services of Sri Golla Vijayender Rao, waterman with effect from 28-6-1982 and not considering him for further employment while engaging a fresh hand in his place was not justified and that he is entitled for reinstatement with full back wages and other attendant benefits. The award is passed in terms of the above declaration. The award is dated 26-5-1985.

5. The management of the Bank being aggrieved by the said award filed Writ Petition No. 193 of 1987. The learned single Judge of this Court, placing reliance on judgments dated 28-11-1986 and 25-8-1987 made in WP No. 791 of 1986 and WA No. 270 of 1982 respectively, in substitution of the award passed by the Tribunal, declared that the workman is entitled to be appointed as temporary workman and he is also entitled for back wages from the date of the award i.e., from 26-5-1986. In terms of the above declaration, the writ petition was disposed of. Hence, this writ appeal by the management of the State Bank of India.

6. Ms. Uma, the learned Counsel appearing for the appellant would contend that the award passed by the Industrial Tribunal suffers from an error apparent on its face. Elaborating the contention, the learned Counsel would contend that even according to the trade union which espoused the cause of Sri Golla Vijayendra Rao, the workman had put in only 60 days of service before his services were terminated with effect from 28-6-1982 and, therefore, there was no question of the management following the procedure laid down u/s 25-F of the Act. The learned Counsel would also contend that the relief granted by the Industrial Tribunal is beyond the scope of terms of reference made by the Government of India in its reference order dated 28-12-1983.

7. This writ appeal was heard by us on 3-4-2002 and 4-4-2002 and on both the occasions, the learned Counsel appearing for the workman was not present nor any representation was made on his behalf. Nevertheless, the case was adjourned to this day with the fond hope that the learned Counsel for the

workman would appear and assists the Court in decision-making. Today also, none appeared nor any representation was made on behalf of the 2nd respondent workman. In the absence of the participation of the 2nd respondent, we are left with no option but to proceed with the order on the basis of the material placed before us.

8. In our considered opinion, in directing the reinstatement of Sri Golla Vijayender Rao, with full back wages and other attendant benefits, the Industrial Tribunal has exceeded the jurisdiction vested in it. It is well settled that the jurisdiction of the Industrial Court to decide industrial disputes is determined by the terms of reference. In *Rai Sahib Ramdayal Ghasiram Oil Mills Vs. The Labour Appellate Tribunal and Another*, does such jurisdiction adjudicate dispute. Where order referring industrial dispute 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 point specifically mentioned and anything which is incidental thereto. We do not find it necessary to dilate this aspect further because in a recent judgment in WA No. 649 of 2001, dated 11-3-2002, we have had an occasion to consider the case law governing jurisdiction of the Industrial Court to decide industrial disputes on a reference by the appropriate Government u/s 10(1) of the Act.

9. As could be seen from the terms of reference, the only question referred to the Industrial Tribunal for adjudication is whether the management of the Bank is justified in terminating the services of Sri Golla Vijayendra Rao with effect from 28-6-1982 and not considering him for further employment while engaging the services of another adhoc employee. The terms of reference do not contemplate the relief of reinstatement to the workman. In that view of the matter, it should be held that the relief of reinstatement with full back wages and attendant benefits granted by the Industrial Tribunal is in excess of the jurisdiction vested in the Industrial Tribunal and on that count itself, the award cannot be sustained. The reason given by the Industrial Tribunal to grant the relief of reinstatement with full back wages and attendant benefits is that the termination of the services of Sri Golla Vijayender Rao was effected without following the procedure laid down u/s 25-F of the Act.

We are at a loss to understand how the provisions of Section 25-F of the Act are attracted. Even according to the trade union, which has espoused the cause of the workman, the workman was appointed on a purely temporary and adhoc basis for a period of 60 days and after the expiry of 60 days, his services were terminated. It is nobody's case that the workman had put in 240 days of "continuous service" within the meaning of that term as defined under the Act. If that is so, the provisions of Section 25-F of the Act would not apply. In that view of the matter also, the order of the Tribunal cannot be sustained.

10. The learned single Judge has referred to the two judgments of the Division

Benches of this Court, referred to above, for granting the modified relief directing the management to appoint the workman as temporary employee and to pay the back wages from the date of the award. We have perused the above two judgments. WA No. 791 of 1986 was directed against the order of the learned single Judge directing the management of the Central Bank of India to consider the case of 43 petitioners therein for recruitment after following the procedure contemplated u/s 25-H of the Act read with Rules 77 and 78 of the Rules framed under the act. The Division Bench after noticing the fact that the writ petitioners were given temporary appointments for a fixed short terms and they were not in service since more than 5 years, and therefore, the relief sought by them could not be granted and opining that the regular appointments have to be made in accordance with the regulations applicable, disposed of the writ appeal by directing that the case, of the petitioners therein be considered in accordance with Regulation 25-H only for the type of appointments they were having i.e., temporary appointments which may exist or arise in future. The Division Bench also held that if there is any dispute between any particular individual about the appointment or posts itself, that can be agitated before any authority, which can decide after examining the facts of each case. We do not find any ratio as such in the above judgment which can support the relief granted by the Industrial Tribunal to the workman. Therefore, the said judgment of the Division Bench in no way aid in the decision making in the present proceedings.

11. The judgment in WA No. 270 of 1982 would also no way help the workman. In that case, the question that fell for consideration was whether the Bank's management could be restrained from proceeding with the recruitment of sub-staff in accordance with Circular No. 208, dated 12-8-1990 and to continue the previous procedure for recruiting those persons from the temporary employees seniority list as in force from 31-12-1979 which list was prepared by the predecessor of the first respondent bank (Andhra Bank). The main contention urged in the case was that there was an agreement between the Andhra Bank Employees Union for their absorption and that such an agreement is saved and is binding upon the successor Andhra Bank u/s 5(4) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. The said contention, on consideration of the stipulations in the agreement, was negatived by the learned single Judge. The Division Bench without deciding the claim of the workman finally, directed the writ petitioner to approach the concerned branch and furnish all the details of their previous services and other relevant particulars so as to enable the Bank's management to consider the claim u/s 25-H of the Act. This judgment too has no bearing in the decision making in the present case.

12. In the result, we allow the writ appeal and set aside the order of the learned single Judge, dated 23-8-1996 in WP No. 193 of 1987 and allow the writ petition and quash the impugned award dated 26-5-1986 made in ID No. 2 of 1984 by the Industrial Tribunal (Central) at Hyderabad. No costs.