
(1962) 09 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 237 of 1960

Steel Construction Company	Vs	APPELLANT
Their Workmen and Another		RESPONDENT

Date of Decision : 10-09-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2 (k), 2 (s)

Citation : (1965) 2 LLJ 11

Hon'ble Judges : G.K. Govinda Bhat, J;A. Narayana Pai, J

Bench : Division Bench

Judgement

Govinda Bhat, J.—This is a writ petition preferred under Art. 226 of the Constitution by the management of the Steel Construction Company, Yeshwanthapur, against the award of the labour court, Bangalore, in LCS. No. 23/1957, dated 9 October, 1959, by which 28 workmen referred to in the order of reference made by the Government, were directed to be reinstated in the service of the petitioner "in continuity of their service put in under the alleged contractor Thammayya." Two questions were referred for adjudication of the labour court by the Government under S. 10 of the Industrial Disputes Act. These are :

(1) Whether the 28 workmen specified in the statement appended to the order of reference were in the employment of the Steel Construction Company, Yeshwanthapur ?

(2) Whether the said workmen were dismissed from service on 11 November, 1954 ?

2. The petitioner contended that the said 28 workers were not workmen employed by them but were the employees of their contractor one Thammayya. On the contention, the finding of the labour court contained in Para. 61 of its award reads thus :-

"I, therefore, hold that these 28 workmen were working under Sri Thammayya who was nominally an agent working under the management of the second party."

3. The jurisdiction of the labour court to adjudicate upon the dispute and to order reinstatement is dependent on the fact that the said workmen are employed by the management of the petitioner-company. If no employer-and-employee relationship is found to exist between the management of the petitioner-company and the said 28 workmen, the labour court would have no jurisdiction to order their reinstatement. This is clear from the definition of "workman" read in conjunction with the definition of "industrial dispute" in Ss. 2(s) and 2(k) of the Industrial Disputes Act, 1947. The definitions read thus :

Section 2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Section 2(s) : "'workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connexion with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i) who is subject to the Army Act, 1960, or the Air Force Act, 1960, or the Navy (Discipline) Act, 1934, or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

4. If the two definitions are read together, it is evident that the workman must be employed for hire or reward and such hire or reward must be fixed under a contract between the employer and employee. Workers employed by a contractor who has entered into a contract with the management, would not be workmen coming within the definition of the Industrial Disputes Act, entitled to raise an industrial dispute with the management. The true test is as to whether the contractor or the management has employed the workmen. The finding of the labour court that the said 28 workmen were working under Sri Thammayya, if

read literally, would mean that they were employed by the contractor and not by the management. But it is argued by Sri Nagesha Rao, the learned counsel appearing for the workmen, that what the labour court intended to hold was that the alleged contractor Sri Thammayya was merely a nominal figurehead and was used as a cloak to cover the existence of employer-and-employee relationship between the petitioner and the said 28 workmen. In support of his contention, the learned counsel relied on certain observations made by the labour court in the course of the narration of evidence. The crucial question to be decided by the labour court was whether the said Sri Thammayya was an independent contractor who had himself employed the said 28 workmen or whether he himself was an employee of the petitioner-company who procured for the petitioner these 28 men for employment under the petitioner. It is not possible to come to a definite conclusion as to what was found by the labour court. From a perusal of the award, it cannot also be said that the labour court came to a definite conclusion that there was no employer-and-employee relationship between the petitioner and the said 28 workmen, and, therefore, the contention of the petitioner that the labour court had no jurisdiction to order their reinstatement cannot be accepted without a clear finding to that effect. The question as to whether there is employer-and-employee relationship is a question of fact. But when the finding is ambiguous and is open to conflicting interpretations, the proper course is to set aside the award and remand the matter to the labour court to give a clear finding on the material on record after hearing both the parties.

5. For the above reasons, we allow this writ petition and quash the impugned award and direct the labour court to expeditiously dispose of the matter in accordance with law.

6. In the circumstances of the case, parties will bear their own costs. It is made clear that the parties will not be entitled to adduce any fresh evidence.