

(2000) 03 KAR CK 0116
In the Karnataka High Court
Case No : Writ Appeal No. 4287 of 1999

The Assistant Engineer (CXL), Maintenance, Telephone
Exchange, Belgaum

APPELLANT

Vs

S.K. Dinde

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Constitution of India, 1950 — Article 246, 254
Industrial Disputes Act, 1947 — Section 10 (4-A), 25 F, 7

Citation : (2000) 87 FLR 633 : (2000) ILR (Kar) 3493 : (2000) 6 KarLJ 14 :
(2000) 4 KCCR 326 SN : (2001) 1 LLJ 404

Hon'ble Judges : N.S. Veerabhadraiah, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri Ashok Harnahalli, for the Appellant; Sri K. Subbarao, for the Respondent

Judgement

G.C. Bharuka, J.—This writ appeal is directed against the order dated 16-4-1997 in W.P. No. 37388 of 1995 as modified by subsequent order dated 3-11-1998 in C.P. No. 989 of 1997, whereby the learned Single Judge has affirmed the judgment and award of the Labour Court, Hubli, directing reinstatement of the respondent but by restricting back wages only from the date of award i.e., 21-4-1995 till the date of reinstatement as against full back wages from the date of retrenchment but otherwise with continuity of service and other consequential benefits.

2. The questions which have fallen for our consideration are of vital consequence being related to jurisdiction of the Labour Courts functioning in the State. First we may notice the bare minimum facts which are relevant for the above purpose. The respondent was employed as a casual worker on the muster roll of the telephone exchange at Belgaum from 10-9-1985. But keeping in view the subsequent policy decision taken by the Government of India, the services of all the casual workers were terminated by following the statutory requirements contemplated u/s 25F of the Industrial Disputes Act, 1947 (in short the "Act").

3. In the case of respondent, one month's notice was issued to him on 28-10-1988 (Annexure-B) clearly stating therein that on expiration of the said period from the date of receipt of notice he stand retrenched. Retrenchment compensation amounting to Rs. 1,143/- was also paid to him on 19-12-1988 (Annexure-C). After receiving of the compensation, he filed application being O.A. No. 1815 of 1988 before the Central Administrative Tribunal questioning his termination from service. But the same was dismissed by the Tribunal on merits by an order dated 19-6-1989 (Annexure-D) upholding the order of termination as valid. Anyhow, the Tribunal made an observation that the department should make attempt to rehabilitate the respondent in a regular appointment with such expedition as may be possible in the circumstances of the case.

4. The respondent employee, by suppressing the material facts regarding his approaching the Central Administrative Tribunal and of having already received the retrenchment compensation as per Section 25F of the Act after due notice, raised a dispute before the Labour Court, Hubli, by filing a complaint on 28-4-1989. On service of notice, the appellant-Assistant Engineer appeared and filed his objections on 9-4-1990 setting out the entire details relating to termination of the respondent's service after notice, payment of compensation and affirmation of his termination order by the Central Administrative Tribunal. Curiously, despite the said facts having been brought on record, the Labour Court passed an award dated 21-4-1995 directing reinstatement of the respondent with full back wages, which, on being challenged before this Court in W.P. No. 37388 of 1995 was affirmed subject to modification in respect of only back wages as already noticed above.

5. In our opinion, keeping in view the facts of the present case, the following two material questions touching upon the jurisdiction of the Labour Court clearly emerge for consideration.-

(i) Whether an industrial dispute concerning an employee of the Union is at all entertainable u/s 10(4-A) of the Act by a Labour Court?

(ii) Whether an employee/workman can invoke jurisdictions of both the Administrative Tribunal as well as the Labour Court assailing the order of his termination/retrenchment?

Reg. Question No. 1

6. Section 2(a) of the Act defines "appropriate Government". It inter alia, provides that in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, the Central Government will be the appropriate Government and in relation to any other industrial dispute not covered by sub-clause (i) of clause (a) of Section 2, it will be the State Government. Therefore, in relation to industrial disputes concerning employment under the Union, it is the Central Government alone, which can refer the dispute to the Labour Court constituted u/s 7 of the Act.

7. According to the legislative scheme evolved by the Parliament as is evident from Section 10, a Labour Court gets the jurisdiction to adjudicate an industrial dispute only if it is referred to it by the appropriate Government.

8. The Karnataka State Legislature, by way of deviation from the Parliamentary scheme, inserted sub-section (4-A) in Section 10, by Karnataka Act 5 of 1988 with effect from 1-7-1988, which reads thus.-

"(4-A) Notwithstanding anything contained in Section 9-C and in this section, in the case of a dispute falling within the scope of Section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-section (1)".

8-A. Under the above State Amendment, an individual workman has been authorised to apply to the Labour Court for adjudication of the dispute pertaining to his discharge/dismissal/retrenchment/termination without requiring the State Government to refer the dispute u/s 10(1) of the Act or approaching the Grievance Settlement Authority u/s 9-C thereof. The only mandatory condition for taking the benefit of Section 10(4-A) is that an application for adjudication of dispute has to be filed within the time prescribed therein.

9. Taking the benefit of the above provision, the respondent, who was admittedly in the employment of the department of telephones, being a limb of the Central Government, as stated above raised a dispute by filing a complaint on 28-4-1989 before the Labour Court at Hubli, which has been constituted by the State Government, and obtained the impugned award of reinstatement. The appellant-Assistant Engineer of Telephone Exchange after his appearance before the Labour Court raised a preliminary objection questioning the jurisdiction of the Labour Court to adjudicate the dispute but the same was rejected by order dated 2-12-1994 holding that the Court is competent to adjudicate the dispute in respect of employee even of the Central Government.

10. The Act as framed by the Parliament is referable to Entry 61 of the Union List (List I) as also Entry 22 of the Concurrent List (List III) contained in the Seventh Schedule to the Constitution of India. These entries read as under.-

Entry 61 of List I: Industrial disputes concerning Union employees.

Entry 22 of List III: Trade unions: industrial and labour disputes.

11. It is quite obvious that sub-section (4-A) of Section 10 was inserted by the State Legislature pursuant to its legislative powers under Entry 22 of the Concurrent List. Though this sub-section does not say in so many words that it will not apply to the employees of the Union but it has to be so held by the necessary implication to save it from the vice of the constitutional invalidity. The

reason is quite simple and has been well-settled by the Apex Court.

12. Article 246 of the Constitution, which deals with the subject-matter of laws which can be made by Parliament and the Legislatures of States, reads as under:-

Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States.-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) xx xx xx xx. (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the "State List").

(4) xx xx xx xx.

13. Interpreting Article 246 of the Constitution, the Supreme Court in the case of *Sudhir Chandra Nawn Vs. Wealth-tax Officer, Calcutta and Others*, , has held that.-

"Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in clauses (2) and (3), that is made more emphatic by providing in clause (3) that the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule, but subject to clauses (1) and (2). Exclusive power of the State Legislature has therefore to be exercised subject to clause (1), i.e., the exclusive power which the Parliament has in respect of the matters enumerated in List I".

14. Now, coming to the legislative field concerning the industrial disputes, so far as such disputes relating to the employees of the Union are concerned, this being the subject-matter of Entry 61 List I (Union List), it lies in the exclusive legislative domain of the Parliament. Therefore, to this extent, the legislative power of the State's Legislature stands curtailed despite the fact that Entry 22 in List III (Concurrent List) is of wider sweep. Further, since industrial disputes concerning Union employees is a subject-matter of List I, therefore even the President's assent under Article 254 of the Constitution cannot give any competence to the State Legislature to enact in respect of the same. Viewed from the above constitutional parameters, if sub-section (4-A), inserted by Karnataka Act 5 of 1988 is held to be applicable to industrial disputes concerning the Union employees as well, then it will be clearly ultra vires the powers of the State Legislature.

15. It is well-settled that where two interpretations are possible, one which sustains the constitutionality and the other which nullifies the provisions, the former must be preferred - *Hotel Balaji and others, Vs. State of Andhra Pradesh*

and others, etc. etc., .

16. Accordingly, we hold that sub-section (4-A) being part of the State Legislation will not apply to the disputes concerning Union employees. Consequently, keeping in view the above discussions, it squarely follows that the respondent being an employee of the Department of Telephones of the Central Government, no dispute could have been raised by him before the Labour Court by invoking the provisions of sub-section (4-A) of Section 10 of the Act and as such the entire adjudication proceedings culminated into passing of the impugned award was ab initio void being inherently without jurisdiction. Therefore, the impugned award passed by the Labour Court at Hubli, is a nullity in the eye of law and does not bind the appellant before us.

Reg. Question No. 2

17. So far as this question is concerned, the decision of the Supreme Court in the case of Taluka Panchayat, Visnagar u Ichhaben Shivram Dave, squarely clinches the issue. In this case, the respondent before the Supreme Court, was employed as water woman by the Taluk Panchayat. Her services came to be terminated on 17-2-1983. After having failed to secure any relief in the internal appeal she approached the State's Civil Services Tribunal. The Tribunal also dismissed her claim. Thereafter, she raised an industrial dispute which was referred to the Labour Court. The Labour Court gave an award in her favour directing reinstatement with back wages. The Taluk Panchayat after having failed before the Gujarat High Court, filed appeal by way of Special Leave before the Supreme Court.

18. The Supreme Court after noticing the above facts held that "the above facts which are borne out from authentic documents in the form of decisions of competent authorities are sufficient to indicate that reference made to the Labour Court after the dispute had been earlier adjudicated in the manner indicated, was clearly incompetent".

19. Keeping in view the dictum of the Supreme Court, since in the present case as well termination/retranchment of the respondent was held to be valid by the Central Administrative Tribunal, it was incompetent on the part of the Labour Court to entertain the dispute in question.

20. In the light of the foregoing discussions, we quash the award dated 21-4-1995 in K.I.D. No. 927 of 1993 on the file of the Labour Court, Hubli, and set aside the order dated 16-4-1997 in W.P. No. 37380 of 1995 as modified by subsequent order dated 3-11-1998 in C.P. No. 989 of 1997 passed by the learned Single Judge. The parties to bear their own costs.