

(1969) 04 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 1788 of 1966

The Coimbatore Co-operative Milk Supply Union Ltd.,
Coimbatore

APPELLANT

Vs

S. Siluvaimuthu and Others

RESPONDENT

Date of Decision : 21-04-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2A

Citation : AIR 1970 Mad 305 : (1970) 2 LLJ 101

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Advocate : Krishnamachari, for V. Subramanian, for the Appellant; N.G.R. Prasad, for Row and Reddy, S. Madhavan and M. Chinnappan for Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Venkataraman, J.—This petition has been filed under Article 226 of the Constitution by an Employer. The Coimbatore Co-operative Milk Supply Union Limited, Coimbatore. challenging the validity of the reference made u/s 10(1)(c) of the Industrial Disputes Act, 1947, by the State Government by G. O. Ms. No. 5680, dated 7-12-1965. By that Order the Government states that in their opinion an Industrial dispute had arisen between the workmen and the management in respect of matters mentioned in the annexure, that it was necessary to refer the said dispute for adjudication and therefore they referred the matter for adjudication to the Labour Court, Coimbatore.

2. The reference related to 7 employees. Respondents 1 to 7 in the Writ Petition. According to the Petitioner, Respondents 1 and 2 stayed away from work on 29-2-1964, Respondents 3 to 6 were dismissed from service for gross misconduct by order dated 17-8-1964 and the 7th Respondent stayed away from duty from 1-8-1964. The reference was whether the non-employment of the seven workers was justified and if not, to what relief each would be entitled.

There was a subsidiary question of computing the relief in terms of money.

3. A preliminary objection was taken before the Labour Court by the Management that the reference was not valid because, according to the Management, there was no industrial dispute. The preliminary objection was overruled by the Labour Court in view of Section 2-A of the Act. That was introduced by Act 35 of 1965 with effect from 1-12-1965 and reads thus:

"Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

4. The Labour Court pointed out that because the management dismissed or otherwise terminated the services of these 7 respondents, Section 2-A was attracted and it was immaterial that no other workman or any union of workmen was a party to the dispute. It is to quash the said order of the Labour Court that the present petition has been filed.

5. In their counter affidavit, the Government (9th Respondent) contend that the said dispute between the management and the 7 workmen was actually sponsored by a trade union called the Coimbatore District Hotel and General Workers' Union and that 11 of the 100 workmen employed under the management were members of the said Union. The Government stated that in making the reference they were not invoking Section 2-A of the Act.

6. The points made by Sri Krishnamachari, learned counsel for the Petitioner, are two-fold: (1) The Government disclaim having acted u/s 2-A. It is therefore not open to the Labour Court to sustain the reference by invoking Section 2-A; (2) Section 2-A will not apply, because it came into effect only on 1-12-1965 and the dismissal of the workers had taken place on dates anterior thereto, namely, on 29-2-1964, 1-8-1964, 4-8-1964 and 17-8-1964. The workers allege that they did not stay away and that their dismissal was wrongful. But it is unnecessary to decide that question at this stage. The only question now before us is whether the reference is competent.

7. Section 10 of the Act says: "Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute to a Labour Court for adjudication." The question for the Court therefore is whether on 7-12-1965, the date of reference, an industrial dispute existed. By that date Section 2-A of the Act had come into force. There is nothing in Section 2-A itself to show that it was intended to apply only to persons dismissed or discharged or retrenched after 1-12-1965. If the crucial date for deciding the competency of the reference is the date of reference, I see no reason why Section 2-A, which had come into force on that day, should not be applied. This being a question of jurisdiction, the mere fact that the Government

say that they did not mean to invoke Section 2-A is immaterial. If the Court finds that the Government had jurisdiction by virtue of Section 2-A, it is open to the Court to sustain the reference with reference to that.

8. The main point taken in the petition therefore fails. A subsidiary point which is taken is that though the main order of the Government has been duly authenticated by the Deputy Secretary to the Government, the Annexure (which sets out the matters in dispute) has been authenticated only by the Superintendent. But the Government point out in their counter affidavit that the Superintendent himself has been authorised and secondly that the draft order was approved by the Deputy Secretary who had the necessary authorisation.

The petition fails and is accordingly dismissed. There will be no order as to costs.