
(2011) 12 KAR CK 0123

In the Karnataka High Court

Case No : Writ Petition No. 44530 of 2011 (L-RES)

The Management of ITC Ltd.

APPELLANT

Vs

Sri M. Kuppuswamy

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (s)

Citation : (2011) 12 KAR CK 0123

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Kasturi, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Mohan Reddy

1. The employer aggrieved by the order dt. 18/10/2011 in Ref. No. 24/2007 of the Labour Court. Bangalore, returning a finding in the negative over the additional issue, holding the domestic enquiry as not fair and proper, has presented this petition.

2. Sri. K. Kasturi, learned Sr. Counsel, submits that the State government exercising a jurisdiction under Sec. 10 of the Industrial Disputes Act, 1947, for short the "Act", having referred the industrial dispute over the justification of the petitioner employer to terminate the respondent-employee, for acts of misconduct, after holding a domestic enquiry, extending reasonable opportunity of hearing, the Labour Court in the premise of pleadings of parties, framed an additional issue relating to the validity of the domestic enquiry, recorded evidence, both oral and documentary, over the additional issue, however without appreciating the legal principles enunciated in a plethora of judgments, though observed them in the order impugned. recorded unjust and incorrect findings. According to the learned Sr. Counsel, the finding on the additional issue is the sine qua non for exercise of jurisdiction of the Labour Court in the adjudication of

the industrial dispute and a challenge to its correctness, at the threshold, before proceeding to adjudicate on the merit of the misconduct by directing parties to adduce evidence for the first time before the Labour Court, is permissible in exercise of writ jurisdiction. Learned Sr. Counsel hastens to add that if the order impugned is interfered with and corrected to fall in line with the established principles, inevitably, the finding on the additional issue will be in the affirmative, not necessitating the requirement to adduce evidence afresh on the misconduct, since even otherwise, witnesses for the employer may not be available for recording their evidence at this distance of time.

3. Having heard the learned Sr. Counsel, perused the pleadings and examined the order impugned, indisputably the factual matrix discloses that the termination of the service of the respondent - employee was preceded by a domestic enquiry, the validity of which is the very essence of the adjudication by the Labour Court, under the Act. Undoubtedly the law requires adjudication and a decision, at the preliminary stage, over the validity of the domestic enquiry, i.e., whether the employee was extended reasonable opportunity of hearing in the enquiry, in other words, whether principles of natural justice were followed, since its violation renders nugatory the order of termination from service. If the issue is answered in the negative, that the enquiry was not fair and proper the employee is entitled to an enquiry afresh before the Labour Court, on the allegation of misconduct which, if, the employer establishes to the satisfaction of the Labour Court, the termination would relate back to the date of the order of termination by the employer, whence the Labour Court may exercise its discretionary jurisdiction to interfere with the quantum of punishment. Alternatively, if the domestic enquiry is held fair and proper, the employee would be entitled to adduce evidence on the a negation, if any, over victimization, where after the Labour Court would examine the perversity of the findings recorded by the enquiry officer, over misconduct and accordingly record its findings on born, perversity and victimization. If victimization is established, would render invalid the order of termination. In the case of discharge or dismissal from service, on recording a finding that there is no perversity in the finding of the Enquiry officer, however. if the punishment is shockingly disproportionate to the misconduct proved, the Labour Court would interfere with the order of termination and substitute it with a lesser punishment and if not. confirm The order of termination, and accordingly rejected the Reference.

4. In D.P. Maheshwari vs. Delhi Administration & Others AIR 1984 SC 153 the Apex Court having regard to the findings of the Labour Court on the preliminary issue, whether the terminated employee discharging duties of clerical nature fell within the meaning of the term "workman" under Sec. 2(s) of the Act, held that in adjudication of labour disputes, delay may lead to misery and jeopardize industrial peace and hence should decide all issues in the dispute at the same time without trying some of them as preliminary issues, nor should High Courts in exercise of jurisdiction under Art, 226 of the Constitution of India, stop proceedings before the Tribunal so that a preliminary issue may be decided by

them, than amounting to exploitation by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decisions on issues more vital to them. In addition, it was held that the High Court should not be too astute to interfere with the exercise of jurisdiction by Special Tribunals at interlocutory stages and on preliminary issues.

(Emphasis supplied)

5. The aforesaid ratio was followed by a Larger Bench of the Apex Court in the case of *Workmen of Hindustan Lever Ltd. vs. Hindustan Lever Ltd.* 1984 (2) ILJ 391 observing that unhealthy and un-judicial practices resorted to unduly delay adjudication of disputes, was the reason for adjudication of industrial disputes for the resolution of which an informal and simple procedure was devised, than from the delayed practice of civil court.

6. Learned Sr. Counsel submits that the decision in *D.P. Maheshwari's case*, supra, does not operate as a fetter in the exercise of writ jurisdiction to interfere with interlocutory orders, by pointing to the observation of a learned Single Judge of this court in *Motor Industries Co. Ltd. vs. D. Adinarayanappa* 1991 (52) FIR 90 at pages 99 and 100. which reads thus:

But at the same time, it should be noticed that the reason which permitted the Supreme Court to make the aforesaid, observation are set out in the last sentence wherein it is stated that the Supreme Court was making those observations in anxiety that there is no undue delay in the industrial adjudication. Therefore, it is clear that if in a given case the refusal to interfere against the order of the Labour Court is itself going to defeat the charges for which the Supreme Court made the aforesaid observations, it would be legitimate for the High Court to interfere even against an order of the Labour Court on a preliminary issue and particularly when the order of the Labour Court is contrary to law laid down by the Supreme Court itself.

7. Learned Senior Counsel would place reliance upon the decision in *Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.*, wherein the Apex Court at paragraphs 68 and 69 observed thus:

68. A "jurisdictional fact" is one on the existence of which depends the jurisdiction of a Court, Tribunal or an Authority, If the jurisdictional fact does not exist, the Court or Tribunal cannot act. If an inferior Court or Tribunal wrongly assumes the existence of such fact, a writ of certiorari lies. The underlying principle is that by erroneously assuming existence of jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

69. The counsel referred to a recent decision of this Court in *Arun Kumar -vs- Union of India* [(2007) 1 SCC 732]. Speaking for the Court, one of us (C.K. Thakker. J.) observed: (SCC p. 758 para 74).

74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such foci, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon its jurisdiction which it otherwise does not possess".

It was further observed: (SCC 759, para 76):

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a Court of limited jurisdiction.

8. Though Sri. K. Kasturi, learned Sr. Counsel seeks to persuade the court, based on the fact situation, to interfere with the order impugned, I am afraid, cannot be countenanced. Regard being had to the facts and circumstances of the case requiring examination of the evidence on record and hearing lengthy arguments, which could be postponed, conveniently, to a later date after the Labour Court records its findings in the final award and if the employer questions the same. Keeping in mind the pregnant observations of the Apex Court in D.P. Maheshwari's case and Hindustan Lever's case, supra, the order impugned does not call for interference, at this stage.

9. Sri. K. Kasthuri, learned Senior Counsel, submits that the petition be kept on board, until the Labour Court passes an award and if questioned by the employer, this petition be dubbed and heard together. I am afraid, that submission too is unacceptable for the simple reason that if the petitioner-employer is aggrieved by the award that may be passed by the Labour Court, it may, in addition, question the order impugned also and if not aggrieved by the award, may question the order impugned, if so advised.

Reserving liberty to the petitioner to question the order impugned after the Labour Court passes an Award, if so advised, petition is accordingly rejected.