
(1996) 02 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28782 of 1995

The Oriental Insurance Company Limited

APPELLANT

Vs

K. Hanumantha Rao and Another

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (1996) 2 ALT 749 : (1996) 2 LLJ 1085

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Amancharla Krishna Murthy, for the Appellant; A.K. Jayaprakasha Rao, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The petitioner assails the legality and correctness of the orders passed by the Industrial Tribunal-I, Hyderabad in I.A.No. 124 of 1995 in I.D. No. 13 of 1993 dated November 28, 1995, A further consequential direction is sought directing the respondent- Industrial Tribunal to decide the issue of jurisdiction as to whether the petitioner in I.D. No. 13 of 1993 is a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short the "Act"). In effect, the petitioner prays both for a writ of certiorari to quash the order passed by the 2nd Respondent-Industrial Tribunal in I.A. No. 124 of 1995 and for a direction in the nature of writ of mandamus directing the Tribunal to frame a preliminary point as to whether the Tribunal has the jurisdiction to proceed further in the matter.

2. Facts may be briefly summarised. The 1st respondent employee, while working as Development Officer in the petitioner-Insurance Company was served with a charge sheet dated November 26, 1986 making certain serious allegations against him and alleging that he had exhibited lack of integrity and conduct unbecoming of a public servant and thereby contravened Rule 3(i) of the General

Insurance (Conduct, Discipline & Appeal) Rules, 1975. The 1st respondent submitted his explanation on January 22, 1987 and an enquiry was held in which it is stated that the 1st respondent also participated. The petitioner herein passed orders removing the 1st respondent from its service vide order dated November 28, 1990 and the 1st respondent's appeal to the appellate authority was rejected on September 27, 1991. In June, 1992, the Assistant Commissioner of Labour at Vijayawada initiated conciliation proceedings in the matter and submitted his report and on the basis of the said report, the Government of India Ministry of Labour by order dated February 16, 1993 referred the following issue for adjudication and the same is pending on file of the 2nd respondent-Industrial Tribunal.

"Whether the action of the management of Oriental Insurance Company Limited in removing Sri K. Hanumantha Rao, Ex-Inspector, from service is justified? If not, to what relief Shri. K. Hanumantha Rao is entitled to?"

3. In the course of the proceedings, the 2nd respondent held that the domestic enquiry held against the 1st respondent is vitiated for the reason of non-supply of enquiry officer's report. However, the same is not the subject-matter of this writ petition.

4. The petitioner herein filed I.A. No. 118 of 1995 seeking permission of the 2nd respondent-Tribunal to amend the pleadings raising a specific plea that the 1st Respondent-employee herein is not a workman as defined in Section 2(s) of the Act and the same was ordered on September 22, 1995. Thereafter, the petitioner herein filed I.A. No. 124 of 1995 requesting the Tribunal to frame a preliminary issue and decide as to whether the 1st respondent-employee is a workman within the meaning of the provisions of the Act. The Tribunal, by order dated November 11, 1995 dismissed the application refusing to take up the matter as a preliminary issue and held that there is no need to decide the question as to whether the 1st respondent-employee is a workman within the meaning of the provisions of the Act as a preliminary issue. Hence the writ petition.

5. Though the miscellaneous application came up for hearing, both the learned Counsel for the petitioner as well as the respondent requested this Court to dispose of the writ petition itself and at their request, the writ petition itself is taken up for disposal. I have elaborately heard both the learned Counsel for the petitioner as well as the respondents.

6. Shri Amancharla Krishna Murthy, learned Counsel for the petitioner submits that the impugned order passed by the 2nd respondent-Tribunal is ex facie illegal, void and is liable to be quashed. The learned Counsel further submits that the Tribunal is duty bound to decide preliminary point as to whether the 1st respondent-employee is a "workman" within the meaning of Section 2(s) of the Act as the same is the jurisdictional fact. The Tribunal would not get any jurisdiction to adjudicate the matter unless it first decides the same as a preliminary issue.

7. One important aspect of the matter to be noticed is that at no point of time the petitioner raised any issue whatsoever about the 1st respondent not being a workman. Admittedly, no such plea was taken before the Industrial Tribunal at the initial stage. Such a plea was taken subsequently, during - the pendency of the proceedings and the Tribunal allowed his petition and permitted it to take such a plea. The question to be considered is as to whether the impugned order passed by the Tribunal is vitiated on any Court so as to be corrected by this Court in its certiorari jurisdiction.

8. Shri A.K. Jayaprakash Rao, learned Counsel appearing for the 1st respondent-employee submits that the management is adopting dilatory tactics and filing application after application in the Tribunal only with a view to protract the proceedings. Learned Counsel further submits that the writ petition itself is misconceived and not maintainable as the order passed by the Tribunal would in no way affect the rights of the petitioner if any and the matter and the issue which is sought to be raised as a preliminary issue can still be adjudicated by the Tribunal as one of the issues. The learned Counsel brings to the notice of this Court that by order dated January 31, 1995, the Tribunal held that the domestic enquiry conducted against the petitioner is vitiated on account of violation of the principles of natural justice and thereafter, the petitioner sought permission to justify the action and accordingly on May 12, 1995 one witness was examined after taking several adjournments and Exs. M-1 to M-18 were marked and the matter was adjourned for further evidence. The learned Counsel further submits that instead of proceeding with the trial, the instant application is filed with a view to delay the proceedings and therefore, the instant application is not a bona fide one.

9. By the impugned order, the Industrial Tribunal merely refused to frame a preliminary issue to consider as to whether the 1st respondent-employee is a workman and admittedly does not express any opinion on the merits "whether the employee is a workman or not". The Tribunal came to the conclusion that all the issues are to be decided together and the same would be in the interest of justice and in the interests of speedy disposal of the matter.

10. Higher Courts in India time and again expressed about the disability of quick disposal of cases arising under the Industrial Disputes Act. Industrial peace and tranquility requires early disposal of the cases. The very purpose of creating Industrial Tribunals and Labour Courts would otherwise get defeated. The procedure for enquiry before the Industrial Tribunal/Labour Court is regulated by various special enactments with the purpose and object of speedy disposal of the cases. Our experience has shown that most of the time frivolous miscellaneous applications are brought before the Industrial Courts with a view to protract the proceedings. The practice of filing unnecessary applications stalling the proceedings on one or the other pre-text needs to be discouraged and deprecated.

11. On what count can it be said that the order passed by the Industrial Tribunal

suffers from any illegality? It is not in violation of the principles of natural justice and it is not an order which suffers from any inherent lack of jurisdiction and not an order which finally decides about the rights of any party as such. Can it be said that the Tribunal under any statutory and legal obligation to frame a preliminary issue as prayed for in this case? Admittedly, there is no statutory compulsion or any provision under which the Tribunal is under an obligation to frame any preliminary issue as such. It may be entirely a different matter that the Tribunal is authorised and has jurisdiction to frame a preliminary issue in appropriate cases and decide the same for good reasons. The Tribunal in this case refused to frame a preliminary issue and has decided to proceed further with the enquiry and decide all the issues which may arise for consideration in the case. It is difficult to hold that the Tribunal had committed any illegality as such. The Tribunal's view in the instant case may be right or wrong and this Court is not concerned with the same. This Court does not exercise any appellate power over the orders passed by the Industrial court, but exercises any appellate power of judicial review and the power of superintendence. Every wrong order passed by a competent authority or Tribunal need not be corrected by this Court in exercise of its jurisdiction under Article 226 of the Constitution unless the same results in mis-carriage of justice and unless the same suffers from any inherent lack of jurisdiction. Such is not the case here.

12. Shri Amancharla Krishna Murthy, learned Counsel for the petitioner relies upon a judgment of the Apex Court in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, and placed reliance upon the observation made in paragraph 11 which read thus at PP 231-232:

"There is also no doubt that the proceedings before the Industrial Tribunal are in the nature of quasi-judicial proceedings and in respect of them a writ of certiorari can issue in a proper case. If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for appropriate writ, and the power of the High Court to issue an appropriate writ in that behalf cannot be questioned".

In the very same judgment, the Apex Court held that the High Court has the jurisdiction to entertain a petition even at the initial stage of the proceedings proposed to be taken before the Industrial Tribunal and further held that there is no dispute in law that the aggrieved person is entitled to move the High Court even at the initial stage and satisfy that the dispute raised is not an industrial dispute and so, the Industrial Tribunal has no jurisdiction to embark upon the proposed enquiry.

13. The learned Counsel also relied upon a decision of the Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, in which the Supreme Court held at pages 385 -386:

"When a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether

domestic enquiry has violated the principles natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue and when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

I fail to appreciate as to how the said two judgments of the Apex Court referred to herein above would support the contention of the learned Counsel for the petitioner. It is true that the decision in *Express News Paper (P) Ltd* 's case (supra) the Apex Court held that if the Industrial Tribunal assumes jurisdiction over a non-industrial dispute that can be successfully challenged before the High Court and also held that in appropriate cases, the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an "Industrial dispute" or not. The said decision does not hold that in every case, the Industrial Tribunal has to frame a preliminary issue and decide as to whether the case referred to it is an industrial dispute or not.

14. Cooper's case (supra) on the other hand cautions that there will be no justification for any party to stall the final adjudication of the dispute by questioning the decision of the Labour Court with regard to the preliminary issue when the matter can be agitated even after the final award is passed and further held that it would be legitimate for the High Court to refuse to intervene at the preliminary stage.

15. However, the learned Counsel for the respondent Shri A.K. Jayaprakash Rao relies upon a later decision of the Supreme Court in *D.P. Maheshwari Vs. Delhi Administration and Others*, wherein the Apex Court observed:

"There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues".

This is the latest pronouncement of the Supreme Court on this particular issue and I am bound by the ratio declared by the Apex Court. However, learned Counsel for the petitioner relies upon a judgment of the Karnataka High Court in *Hira Sugar Employees Co-op. Consumers Stores Ltd., Belgaum Vs. P.P. Korvekar*

and Others, . A careful reading of the decision would lend no support whatsoever to the plea advanced by the learned Counsel for the petitioner. In fact the said decision by the learned single Judge referred to a decision of the Division, Bench of the very same High Court in *Management of Rangaswamy & Company v. D.V. Jagadish* in categorical terms quotes:

"The Labour Court ought to have decided the issue as a preliminary issue if it was required to consider the interim relief sought for by the 1st respondent. Wherefore in a case where no interim relief is sought for or is required to be granted the issue affecting the jurisdiction can also be tried along with the other issues. However we would like to make it clear mat it all depends upon the facts and circumstances of each case as to whether an issue touching the jurisdiction of the Labour Court or Industrial Tribunal should be tried as a preliminary issue or not."

In the judgment relied upon by the learned Counsel for the petitioner, the employee therein filed an interlocutory application and the Industrial Tribunal directed payment of subsistence allowance to him at the rate of 75% of the wages last drawn with effect from July 31, 1992. Therefore, it was a case where an interim relief was sought by the employee and in the circumstances, the Kamataka High Court took the view that the Industrial Tribunal has to decide the preliminary issue as to whether the employee wherein was a workman within the meaning of the provisions of the Industrial Disputes Act. In such view of the matter, the Kamataka Judgment relied upon by the learned Counsel for the petitioner is of no help.

16. Learned Counsel for both the parties referred to certain other judgments of the apex Court in support of the rival contentions as to whether the 1st respondent-employee is a workman within the meaning of the provision of the said Act and there is no necessity whatsoever to refer to all of them as I am not expressing any opinion whatsoever with regard to the question as to whether the 1st respondent-employee is a workman or not as the same is yet to be decided by the Industrial Tribunal along with all other issues raised by the parties. It is true that the Industrial Tribunal, Labour Court would not be in a position to grant any relief to any employee unless the employee is a workman and the dispute raised is an industrial dispute. There is no doubt that the Industrial Tribunal has to decide as to whether any employee seeking any relief is a workman within the meaning of Section 2(s) of the said Act. Then only, the Tribunal would have the jurisdiction to grant relief. Therefore, whether any employee is a workman or not in a given case is a jurisdictional fact which must exist before any relief is granted by the Industrial Court. A "jurisdictional fact" is one of existence or non-existence of it depends on assumption or refusal to assume jurisdiction by the Court, Tribunal or authority. Black's Legal Dictionary defines "jurisdictional facts" as "those matters of fact which must exist before the Court can properly take the jurisdiction of the particular case. It is the settled legal position that no statutory authority or Tribunal can assume jurisdiction in respect of a subject-matter not

conferred on it. No Tribunal can confer jurisdiction upon itself and even by consent of the parties to the dispute. Any error committed by the inferior Tribunals in relation to a jurisdictional fact can certainly be corrected by this Court by way of a writ of certiorari in exercise of the jurisdiction under Article 226 of the Constitution of India. Such is not the case here. The Industrial Tribunal, in the instant case, did not make any pronouncement about the jurisdictional fact and also did not refuse to decide the issue, but the Tribunal merely expressed its opinion that the issue need not be decided as a preliminary issue. That means, the jurisdictional facts as to whether the 1st respondent-employee is a workman within the meaning of Section 2(s) of the Act shall have to be decided by the Industrial Tribunal/Labour Court along with other issues.

17. Mere refusal to decide a jurisdictional facts as a preliminary issue which does not adversely affect the rights of the parties need not be corrected by this Court in a judicial review proceeding. Such orders do not result in any injustice or miscarriage of justice. It is not as if this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India issues writ and corrects every wrong decision of an inferior Tribunal. A Constitutional Bench of the apex. Court in *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, made an authoritative pronouncement as to under what circumstances a writ of certiorari can be granted by the High Court in exercise of the power under Article 226 of the Constitution of India as follows:

"A writ of certiorari cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly."

No writ need be issued in case where the High Court is satisfied that there was no failure of justice as the proceedings by way of certiorari are not of course.

18. In the instant case the order passed by the Industrial Tribunal does not suffer from any manifest error of law and in no way affects the rights of any of the parties to the proceeding. No case for issuance of Writ of Certiorari is made out. No consequential direction in the nature of a mandamus need be issued compelling the respondent-Industrial Tribunal to frame any preliminary issue as prayed for as I am of the opinion that the Tribunal is not under a statutory or legal duty to frame such an issue in every case. The writ petition, therefore, fails and the same is accordingly dismissed, but in the circumstances without costs.