

(1981) 12 KL CK 0012
In the High Court Of Kerala

V. Bhaskaran and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 2A

Citation : (1982) 1 ILR (Ker) 417 : (1982) 1 LLJ 485

Hon'ble Judges : George Vadakkal, J

Bench : Single Bench

Judgement

George Vadakkal, J.—As per Ext. P1 order dated 8-3-1973 the 2nd respondent, the Indian Rare Earths Ltd., dismissed from its service the petitioner for certain misconducts mentioned in that order. The petitioner impugned this order before this Court in O.P. No. 4763 of 1974. As per the judgment therein, a copy whereof is marked here as Ext. P2, this Court took the view that the 2nd respondent being a private limited company no writ can be issued. Consequently, this Court dismissed that writ petition on 16-12-1977. However, a dispute arose over the dismissal of the petitioner and the Assistant Labour Commissioner intervened to bring about a settlement, but to no avail. Therefore, the Assistant Labour Commissioner sent up his Ext. P3 report as contemplated by Section 12(4) of the Industrial Disputes Act, 1947 to the Union Government, the 1st respondent herein. The said report is dated 12-12-1978. With reference to that report as per Ext. P4 communication of 13-7-1979 the 1st respondent stated that they do not propose to refer the said dispute for adjudication "as no mala fide intention is seen on the part of the management". This is impugned by the petitioner.

2. Going by the two decisions of this Court, in Workmen of Cochin Chamber of Commerce v. State of Kerala 1916 II L.L.J. 108 decided by Poti, J. as he then was, and Workmen of J. and P. Coats (India) Pvt. Ltd. Vs. State of Kerala and Others, decided by a Division Bench consisting of Eradi, J. as he then was and Narendran J., Ext. P4 order cannot be sustained. These decisions say that even if the Government comes to a conclusion that prima facie no mala fide intention is

made out on the part of the management, that by itself would not be sufficient reason for refusing reference u/s 12 of a dispute pursuant to a report submitted by the conciliation officer u/s 12(4) of the Industrial Disputes Act, 1947. No authority which has laid down any contrary proposition has been brought to my notice. In that view Ext. P4 order has to be quashed and the 1st respondent has to be directed to consider and dispose of Ext. P3 report in accordance with the provisions of law governing the same and in the light of the guidelines laid down by the Courts in that behalf.

3. However, the question arises as to whether this petition has become infructuous by reason of the death of workman, the petitioner, on 10-2-1981. By order on C. M. P. 9999 of 1981 his legal representatives were impleaded as additional petitioners 2 to 7.

4. Ext. P3 report submitted by the Assistant Labour Commissioner, who attempted to settle the dispute shows that the said dispute was between an individual workman, the petitioner, who filed this writ petition represented by himself and concerned his dismissal from service. In other words, the dispute is one which falls u/s 2A of the Industrial Disputes Act, 1947. The question is as to whether on the matter going back to the Union Government and while that Government is considering the question of referring the dispute to a Tribunal or Labour Court as the case may be u/s 12(5) of the Act is it of any consequence that the employee whose dismissal gave rise to the dispute died pending such consideration.

5. Section 2A was introduced into the statute in order to enable an individual workman to raise a dispute as regards any one of the matters mentioned therein even if other workers or unions do not come forward to sponsor his cause. If the workman is alive, there can be no doubt that the Government has to consider the question of referring that dispute to the concerned authority. The Government may or may not refer. The refusal to refer should be supported by reasons stated in that behalf and communicated to the parties concerned. If the reasons stated and communicated to the parties for refusal to refer the matter are not sustainable as in this case, as already found earlier, the concerned workman can compel re-consideration of the matter by the Government by approaching this Court invoking its jurisdiction under Article 226 of the Constitution. It follows, therefore, that the concerned workman can agitate the question of the validity or otherwise of the reasons stated for refusal to refer the matter by the Government. That is a valuable right. If that be so, his legal representatives can, on the death approach this Court for his same purpose, namely, for compelling a re-consideration of the question of reference to a Tribunal or a Labour Court, as the case may be. That is what additional petitioners 2 onwards have sought for by continuing to prosecute this writ petition. This Court thought it fit to allow them to prosecute the writ petition by allowing them to come on the patty array as additional petitioners 2 to 7.

6 The next question that arises for consideration is as to whether in these

circumstances the Government can refer the matter to the concerned authority, the Industrial Tribunal or the Labour Court as the case may be, if the Government is satisfied that there is a case for reference to such authority. If the workman was alive and there exist valid reasons, there can be no doubt, that the Government is bound to refer the matter to concerned authority. Would it make any difference that the workman died pending consideration of the question of reference by the Government? I do not think so. This is because the legal representatives are entitled to agitate the question of legality or otherwise of the dismissal from service of the workman before the concerned authority, the Industrial Tribunal or the Labour Court, as the case may be. No doubt, the concerned authority who passes the award may not be in a position to direct reinstatement of the workman on that authority coming to the conclusion that the termination of his service was illegal and cannot be sustained. However, there is the question of monetary benefits following from such a finding which the estate of the deceased workman would be entitled to raise before the competent authority. If the competent authority adjudicating upon the Industrial Dispute which arises as aforesaid comes to the conclusion that the termination of his service was bad and cannot be sustained, it can mould the reliefs to be granted to the estate of the deceased workman. The legal representatives of the deceased cannot have this remedy elsewhere in so far as the ordinary Civil Court cannot grant the monetary reliefs which the Industrial Tribunal or the Labour Court, as the case may be, which adjudicates upon the matter, can grant. The Civil Court can, on that Court coming to the conclusion that the dismissal from service was bad, grant only damages for wrongful dismissal. It cannot grant the monetary relief of back-wages or any part thereof as if the workman continued in service despite the termination of his work by an illegal order. Therefore, despite the fact that as submitted by the learned Counsel on both sides, there are no provisions governing such a circumstance as stated above in the Act or in the Rules, the legal representatives of the workman who has raised the dispute can prosecute the proceedings before the Industrial Tribunal or Labour Court, as the case may be, on a reference of the dispute to it by the Government u/s 12(5) of the Act.

7. In this connection it appears to me that the decisions of the Gujarat High Court in Ibrahimbhai Karimbhai and Others Vs. State of Gujarat, and that of Punjab and Haryana High Court in Monmohan Anand v State of Punjab 1972 S.L.R. 852 which decisions were brought to my notice by the learned Senior Central Government Counsel, and fairly so, can be referred to usefully. The decision of the Gujarat High Court concerned the reversion of a Deputy Superintendent of Police. After the petition was filed, the writ petitioner died. The question arose as to whether the proceedings under Article 226 would abate. It was held that the legal representatives of the officer can seek to get a declaration about the validity of the order of reversion and consequential benefits arising from such declaration. It was therefore held in that case that the proceedings under Article 226 do not abate. The same view was taken by the

Punjab and Haryana High Court in the other decision mentioned above. That was a case where the petitioner was removed from his post. The petitioner died during the pendency of the writ proceedings. Here again the question was as to whether the legal representative of the petitioner can be allowed to continue the writ proceedings. Repelling the contention that the cause of action abated, it was held that the cause of action survived in that there can be a declaration of validity or otherwise of the removal order. The legal representatives were allowed to prosecute the writ proceedings

8. Section 2A of the Industrial Disputes Act, 1947 as earlier pointed out is one intended to confer on a workman the right to agitate before an Industrial Tribunal or Labour Court, as the case may be, his grievance caused by his termination of service. That right can be agitated by his legal representatives as well. It may in this context be noticed that as already held by this Court in *Janaki v. State of Kerala* 1976 KLT 181. " in law, a legal representative is not a different person from the deceased, but only continues the persona of the deceased " This decision of Gopalan Nambiyar, J. was followed and confirmed by the Bench decision of this Court in *Devi and Ors. v. State of Kerala* 1977 KLT 781.

9. In view of what is said above, I quash Ext. P4 order and direct the 1st respondent to consider and pass appropriate orders on Ext. P3 report in accordance with law as expeditiously as possible. There shall be no order as regard costs.