

(2016) 06 KAR CK 0089

KARNATAKA HIGH COURT

Case No: Writ Petition No. 43697 of 2015 (L-RES) connected with Writ Petition No. 9403 of 2016 (L-RES)

Udaya TV Private Limited

APPELLANT

Vs

Chandrashekar Thoudoor

RESPONDENT

Date of Decision: June 29, 2016

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33(1), Section 33A, Section 33C(2)

Citation: (2017) 153 FLR 75 : (2016) 6 KantLJ 587

Hon'ble Judges: Aravind Kumar, J.

Bench: Single Bench

Advocate: Sri Chandrashekar Thoudoor - Party-in-Person, for the Respondent; Sri Ramachandra Nair, Advocate for Sri M.R.C. Ravi, Advocate, for the Petitioner

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Aravind Kumar, J. - Though matters have been listed for hearing on interlocutory application, by consent of learned Counsel appearing for petitioner and respondent, matters are heard and finally disposed of by this common order.

2. Parties are referred to as per their rank in W.P. No. 43697 of 2015.

3. Respondent herein was working as a Chief Sub-Editor in the petitioner-company and was issued with articles of charges on 16-8-2006 and was kept under suspension. According to the respondent he has submitted reply to the articles of charges and subsequently it is stated that no order has been passed. However, same has been denied by petitioner contending that they have passed an order of termination on 9-11-2007 itself and same is in serious dispute.

4. Be that as it may. Respondent filed an application under Section 33-C(2) of industrial Disputes Act, 1947 (for short, "I.D. Act") claiming subsistence allowance for

the period November 2006 to March 2007. Though notice was served on the petitioner they remained absent and as such, an order came to be passed on 8-10-2007 allowing the application by directing the petitioner to pay subsistence allowance amounting to Rs. 64,871/- with interest at 6% p.a. Being aggrieved by said order petitioner preferred writ petition before this Court in W.P. No. 10222 of 2010 and same came to be allowed by order dated 27-1-2011 - Annexure-C, where under Order passed by Labour Court on 8-10-2007 came to be set aside and matter came to be remitted back to Labour , Court for adjudicating the matter afresh. Accordingly, Labour Court has readjudicated the matter and by order dated 31-5-2011 - Annexure-D rejected the application. It is not in dispute that said order has reached finality, inasmuch as, respondent herein did not challenge the same.

5. In the meanwhile respondent-workman raised a dispute by approaching the Labour Court, Bengaluru under Section 10(1) and 10(2) of I.D. Act, which came to be numbered as I.D. No. 14 of 2011. Writ petitioner after being notified in the said dispute appeared and filed its statement of objections and denied the claim put forward by respondent as per Annexure-F. During the pendency of said dispute, respondent herein filed an application/complaint under Section 33-A of the I.D. Act alleging that termination order dated 9-11-2007 was intimated only on 27-1-2011 and said termination order was issued without obtaining permission of jurisdictional Labour Court as is required to be obtained under Section 33(1) of the I.D. Act contending inter alia that there was a dispute raised by the claimant/workman and as such order of termination was in contravention with Section 33 of the I.D. Act and also contending that subsistence allowance having not been paid during the period of suspension and thereby it amounts to violation under Section 33(3) of the I.D. Act and hence respondent herein sought for suitable orders being passed namely application filed under Section 33-A of the I.D. Act being allowed. This application came to be adjudicated by Labour Court and after considering rival contentions the II Additional Labour Court, Bengaluru by order dated 8-7-2013 ordered for registering the application filed under Section 33-A of the I.D. Act as a complaint separately as per Annexure-B. After disposal of this application filed under Section 33-A of the I.D. Act by Labour Court on 8-7-2013 - Annexure-B, first party workman has filed a memo on 1-12-2014 -Annexure-J contending thereunder that complainant/workman was permitted to adjudicate the complaint under Section 33-A of the I.D. Act as a reference by appropriate Government and as such, I.D. No. 14 of 2011 has remained irrelevant and as such, he (complainant - first party) is no longer intends to pursue I.D. No. 14 of 2011 and first party - workman prayed for closure of I.D. No. 14 of 2011. Placing the said memo on record, Labour Court by order dated 1-12-2014 accepted the memo and closed the claim statement filed under Section 10(1) and 10(2) as per Annexure-A.

6. Being aggrieved by these two orders i.e., order dated 8-7-2013 -Annexure-B and order dated 1-12-2014 Annexure-A, petitioner i.e., second party employer - Management has filed W.P. No. 43697 of 2015. By virtue of application/petition filed

by workman under Section 33 of the I.D. Act having been accepted and said application having ordered to be registered as a complaint under Section 33-A of the I.D. Act by Labour Court, same has been registered as C.A. No. 1 of 2013. It is thereafter second party - Management was given opportunity to file objections and objections are said to have been filed and trial is also said to have commenced and at that stage an interlocutory application I.A. No. 3 came to be filed by first party - workman i.e., respondent herein for the relief similar to the one sought for in I.A. No. 5. Labour Court by order dated 28-1-2015 ordered to await publication of award in I.D. No. 14 of 2011, which is the subject-matter of W.P. No. 43697 of 2015. When the matter was listed for recording of evidence of writ petitioner, I.A. No. 5 i.e., Annexure-C (in W.P. No. 9403 of 2016) came to be filed by the complainant seeking for a direction to the respondent i.e., writ petitioner herein to make payment of arrears of subsistence allowance of Rs. 1,26,30,000/- with interest at 18% p.a. This application has been ordered to be decided along with main complaint on the ground that prayer sought for in I.A. No. 5 as well as prayer sought for in the main application are one and the same. Same has been impugned in W.P. No. 9403 of 2016 by respondent-workman - first party.

7. I have heard the arguments of Sri Ramachandran Nair, learned Counsel appearing on behalf of Sri M.R.C. Ravi for Management and Sri Chandrashekar Thoudoor - party in-person. Perused the records as well as written arguments filed by party-in-person.

8. It is the contention of Sri Ramachandran Nair, learned Counsel appearing for petitioner that Labour Court committed an error in arriving at a conclusion that Labour Court had already arrived at a conclusion in Application No. 6 of 2007 that respondent is a "workman", which is a factual error, inasmuch as, on order of remand being passed by this Court in W.P. No. 10222 of 2010 Labour Court adjudicated Application No. 6 of 2007 matter afresh and had arrived at a conclusion that it has no jurisdiction to probe into the question of whether applicant therein is a "workman" or not and said issue being at large, Labour Court while adjudicating the application under Section 33 of I.D. Act filed by respondent, could not have allowed the said application on the premise that there is already a finding recorded holding that first party is a "workman". He would also contend that Labour Court erred in arriving at a conclusion that writ petitioner-Management had violated the provisions of Section 33 of the I.D. Act on the ground that no permission had been sought by Management from the Labour Commissioner, since dispute was pending as per Exhibit. W. 15, which is an order dated 17-1-2008 passed by Labour Commissioner granting sanction to workman to prosecute the Management and same does not fall within the nature and scope of circumstances laid down in Section 33 of the I.D. Act and there was no industrial dispute pending as on the date of termination of workman from service by the Management. He would also elaborate his submission by contending that since order dated 8-7-2013 passed in I.D. No. 14 of 2011 was to register the complaint separately, Management had filed its objections that said

application is not maintainable and Labour Court had thereafter proceeded to pass impugned award dated 1-12-2014 by dosing the dispute I.D. No. 14 of 2011 itself, which could not have been done since issue "as to whether the respondent is a "workman" or not" was required to be adjudicated in the said proceedings itself. Hence, he seeks for quashing of the impugned orders.

9. Per contra, Sri Chandrashekar Thoudoor - party-in-person would support the order passed by Labour Court dated 1-12-2014 - Annexure-A and 8-7-2013 - Annexure-B contending that Labour Court on appreciation of entire material on record had arrived at a conclusion and had ordered for registration of application under Section 33-A of the I.D. Act as a complaint separately. He would also draw the attention of the Court that Application No. 6 of 2007 was pending as on the date of alleged order of termination passed by Management, which was on 9-11-2007 and when said dispute was pending before the Labour Commissioner as per Exhibit W. 15 and same pertaining to issue relating to grant of sanction for prosecuting the Management, which came to be disposed of on 17-1-2008 and same being a dispute, Management ought to have obtained permission before passing the order of termination and such permission having not been obtained, it is in violation of Section 33-B of I.D. Act and as such, he would support the order dated 8-7-2013. He would also rely upon order passed in Application No. 6 of 2007 on 8-10-2007 where under Labour Court had arrived at a conclusion that respondent was a "workman" to support the order dated 8-7-2013. He would also submit that while allowing the application under Section 33-A of the I.D. Act Labour Court had declared his termination as unlawful and there is no error committed by Tribunal in that regard. He would further contend that when there is final adjudication with regard to order of dismissal being non est and permission having been granted by Labour Court to the respondent to file complaint under Section 33-A of the I.D. Act as per order dated 8-7-2013, respondent was entitled to the fruits of such order and which would flow from the said order namely payment of subsistence allowance during the period of alleged suspension and it is because of this precise reason namely non-payment of subsistence allowance, respondent had filed both applications namely, I.A. Nos. 3 and 5. Non-consideration of said applications and deferring consideration of said applications by impugned order dated 27-1-2016, is erroneous and same is liable to be quashed. He would submit that no appeal would lie against the order passed by the Labour Court based on finding of a fact and in support of his submission he has relied upon the judgment in the case of **Santanu Kumar Das and Others v. Bairagi Charan Das and Others AIR 1995 Ori. 300**. He would also submit that in case where the proceedings are completed and order of dismissal is successfully challenged on the ground of non-payment of subsistence allowance for the period of suspension during pendency of application under Section 33(1) or 33 of the I.D. Act, it would not be open to the Management to deny the payment of subsistence allowance and Management would be at liberty to seek for permission of the Authority under Section 33(1) or 33(3) of the Act for termination of service and approval of the same

would only be after paying or offering to pay workman the arrears of subsistence allowance at specified rate. In support of his submission he has relied upon the judgment in the case of **Fakirbhai Fulabhai Solanki v. Presiding Officer and Another AIR 1986 SC 1168 ; M/s. Sasamusa Sugar Works (Private) Limited v. Shobrati Khan and Others AIR 1959 SC 923**. He would also rely upon the memo of calculation filed before the Labour Court to buttress his argument that petitioner is entitled for payment of subsistence allowance as indicated therein and on account of non-payment of said amount by the Management, which prayer ought to have been considered and ought not to have been deferred, he prays for allowing W.P. No. 9403 of 2016 and dismissal of W.P. No. 43697 of 2015.

10. Having heard the learned Advocates appearing for the parties and on perusal of the records and on bestowing my careful and anxious consideration to the contentions raised by learned Counsel for petitioner and respondent appearing in person it is noticed that at the first instance respondent had filed a petition under Section 33-C(2), which came to be numbered as Application No. 6 of 2007 Said application was adjudicated ex parte and order dated 8-10-2007 came to be passed and application came to be allowed. Being aggrieved by said order writ petitioner-Management filed W.P. No. 10222 of 2010 and this Court by order dated 27-1-2011 - Annexure-C allowed the same by setting aside the order of Labour Court dated 8-10-2007 and also order dated 30-9-2009 passed by Deputy Labour Commissioner and remitted the matter back to the Labour Court and also directed second respondent-Labour Commissioner to dispose of afresh and in accordance with law. Payment of Rs. 77,000/- by writ petitioner-Management to the respondent during the pendency of writ proceedings was held to be subject to outcome of the proceedings before Labour Court and Deputy Labour Commissioner. On such order of remand having been passed, Labour Court readjudicated the matter and by order dated 31-5-2011 - Annexure-D dismissed the application filed under Section 33-C(2). In the said proceedings Labour Court has observed that while dealing with a petition filed under Section 33-C(2), which is for recovery of money due from an "employer" to the employee" it can be examined only when there is an undisputed issue of jurial relationship of employer" and employee". It came to be held therein to the following effect :

"Section 33-C(1)..... workman. If there is any dispute on this aspect, unless and until that issue is resolved, the Labour Court will not get any jurisdiction to grant the relief. At the same time, it has no jurisdiction to make an enquiry as to whether the employer fall under the definition of "workman", give a finding to that effect and proceed to determine the amount due if any. Since respondent has raised the specific objection to the effect that applicant is not a "workman", unless and until a definite finding is given on that aspect, this Court cannot proceed further. At the same time, this Court has no jurisdiction to determine and resolve the workman issue in the present application. That issue has to be resolved in a petition under Section 10 of the I.D. Act. As per the objections filed by respondent-applicant has

already been terminated from services. In fact, applicant has filed I.D. No. 14 of 2011 challenging his dismissal. In that petition, he is at liberty to establish that he comes under the definition of "workman" and in that event, consequence will follow.

However, having regard to the limited scope of the present application, this Court has no jurisdiction to probe into the question whether applicant is a "workman". Therefore the application is not maintainable."

(emphasis supplied)

11. Having held so it rejected the writ petition filed by respondent-workman by order dated 31-5-2011 - Annexure-D. As already noticed herein above respondent herein filed an application under Section 33-A of the I.D. Act for adjudicating it as a complaint on account of non-compliance of Section 33(1) and alleging contravention of Section 33 of the I.D. Act, which was in the context or matter of I.D. No. 14 of 2011. While adjudicating this application Labour Court by order dated 8-7-2013 after having noticed the previous history of the case has recorded a finding at paragraph 17 to the following effect :

"17. During the trial, the present application under Section 33-A was directed to pay Rs. 77,000/-. It is to be mentioned that after remanding of the Application No. 6 of 2007, my learned Predecessor has adjudicated Application No. 6 of 2007 afresh and by the order dated 31-5-2011 has rejected the application however holding that the first party is a "workman"."

(emphasis supplied)

12. This is a factual error committed by the Labour Court inasmuch as Application No. 6 of 2007, which came to be adjudicated and disposed of on 31-5-2011 a categorical finding has been recorded that issue regarding "workman" being existing or otherwise, is not in its domain. It has been specifically held that said issue is required to be resolved in the pending dispute I.D. No. 14 of 2011. In other words Labour Court has not recorded any finding on the said issue and has left said issue for being adjudicated in pending I.D. No. 14 of 2011. In that view of the matter, Labour Court while adjudicating application filed by respondent under Section 33-A of the I.D. Act by its impugned order dated 8-7-2013 ought not to have arrived at a conclusion that there was already finding recorded in Application No. 6 of 2007 holding that respondent is a "workman". On account of this factual error committed by Labour Court and on this short ground itself impugned order dated 8-7-2013 requires to be quashed.

13. As could be seen from the order dated 8-7-2013 - Annexure-B Labour Court ordered for registering application filed under Section 33-A of the I.D. Act as a complaint for proceeding further in the matter. Accordingly proceedings have taken place before Labour Court and first party workman has also tendered his evidence. When it was at the stage of recording evidence of Management application I.A. No.

5 has been filed seeking for payment of subsistence allowance it has been deferred by Labour Court by order dated 27-1-2016 impugned in W.P. No. 9403 of 2016. When the very order ordering for registering complaint under Section 33-A of the I.D. Act having been set aside by this Court as recorded herein above subsequent orders or proceedings will have to put at naught or in other words it would come to an end.

14. In the light of the discussion made herein above this Court is of the considered view that there being no finding with regard to respondent being a "workman" having been recorded in Application No. 6 of 2007 and having held therein that said issue is required to be dealt with in pending I.D. No. 14 of 2011, the closure of dispute in I.D. No. 14 of 2011 by order dated 1-12-2014 - Annexure-A also cannot be sustained. In that view of the matter, I proceed to pass the following :

Order

(i) Writ Petition No. 43697 of 2015 is hereby allowed. Order dated 1-12-2014 - Annexure-A and 8-7-2013 - Annexure-B are hereby quashed. Dispute I.D. No. 14 of 2011 is restored to file of Additional Labour Court, Bengaluru for being adjudicated afresh in the light of the observation made herein above.

(ii) Application filed under Section 33 of the I.D. Act by complainant is restored to Labour Court for adjudication afresh.

(iii) Writ Petition No. 9403 of 2016 is hereby dismissed.

(iv) No order as to costs.