Karur Vysya Bank Employees Union Vs Karur Vysya Bank Ltd.

Court: Madras High Court

Date of Decision: June 10, 2010

Acts Referred: Constitution of India, 1950 â€" Article 226
Industrial Disputes Act, 1947 â€" Section 33

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: R. Krishnaswamy, for V. Ajoy Khose, for the Appellant; V. Karthick, for T.S. Gopalan, for R1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.
The petitioner is a Trade Union known as ""'Karur Vysya Bank Employees Union"". Six persons by name Anderson

Colin, K. Balachandran, A. Joseph, P. Ganesan, T.R. Venkatachalapathy and A. George Mansingh are its members. According to the petitioner

Trade Union, the above persons were workmen, directly employed by the first respondent Bank for cleaning, sweeping and watching the building

premises of the Bank with effect from 02.03.1986. Further according to the union, the above persons were terminated from service. In respect of

the same, the Government of India (Ministry of Labour) by order dated 28.05.1990 referred the following Industrial dispute for adjudication:

Whether the action of the management of Karur Vysya Bank Ltd., Karur in terminating the services of Shri. Anderson Colin, K. Balachandran, A.

Joseph, P. Ganesan, T.R. Venkatachalapathy and A. George Mansingh with effect from 2.3.86 is justified? If not, to what relief are the concerned

workmen entitled?

2. Based on the said reference, I.D. No. 41 of 1990 was taken up for trial by the Industrial Tribunal at Madras. The Trade Union filed a claim

statement before the Industrial Tribunal, wherein, it was contended that the above persons were directly employed by the Bank. It was also

contended that prior to the termination orders said to have been issued by the Bank, in respect of regularisation of these persons, conciliation

proceedings were initiated and they were pending before the Conciliation Officer. As a matter of fact, notice of conciliation dated 26.02.1986 was

served on the respondent Bank and on the Trade Union on 01.03.1986 itself. It was also contended that despite the same, the above persons

were terminated from service. It was mainly contended that terminating the services of these alleged workmen, permission as required u/s 33 of the

Industrial Disputes Act of the competent authority viz., Conciliation Officer was not obtained and so the termination is illegal an void.

3. But the respondent Bank contended before the Industrial Tribunal that the above persons were not at all employed directly by the Bank. Per

contra, it was stated that the above persons were employed by the ""Security Detective Bureau"" for the security of the Bank. It was further

contended that except their deployment for security work by the Security Detective Bureau, there was no connection between them and the

respondent Bank. It was also contended on the side of the Bank that the contract entered into between the Security Detective Bureau and the

Bank on 13.09.1983 would clearly prove that these six persons had no connection with the respondent Bank at all. It was also contended that the

Security Detective Bureau had directed these six persons to appear in their office at Coimbatore on 01.03.1986 and these 6 persons services

were not terminated by the respondent Bank. Thus, according to the Bank, there was no termination of service of these 6 persons by the Bank and

so the question of violation of Section 33 of Industrial Disputes Act does not arise at all.

4. Before the Industrial Tribunal, on the side of the Trade Union, one Kalyanasundaram was examined as W.W.1 and on the side of the

respondent Bank, one K.G. Vaidyanathan was examined as M.W.1. As many as 16 documents were exhibited on the side of the Union and 15

documents were exhibited on the side of the Management. Having considered all the above materials, the Industrial Tribunal dismissed the claim of

the Union by Award dated 21.02.1997. Challenging the same, the Union has come up with the present writ petition.

5. The Learned Counsel for the petitioner would submit that the Industrial Tribunal had failed to give a specific finding as to Whether there was any

violation of Section 33 of the Industrial Disputes Act, 1947 or not though a specific plea was taken before the Industrial Tribunal that there was

such violation of Section 33 of the ID Act committed by the respondent Bank. The Learned Counsel would further submit that it was not

permissible for the respondent Bank to terminate the services of these six persons without prior permission in writing of the authority viz., the

Conciliation Officer. To substantiate this submission, the Award of the Industrial Tribunal has been filed in the typed set of papers.

6. Per contra, the Learned Counsel for the first respondent would submit that the Industrial Tribunal, on appreciation of the entire evidence, has

given a clear finding that the above said persons were not at all directly employed by the Bank. The Learned Counsel has further pointed out that

the Labour Court has considered all the documents, more particularly, the agreement (Ex.M.3) dated 13.09.1983, whereby, the Bank had entered

into a contract with the Security Detective Bureau. The Learned Counsel has also pointed out that there were other communications between the

Bank and the Security Detective Bureau in respect of the security provided by the said concern which are evidenced by Exhibits M.4 to M.10.

7. The Learned Counsel would also point out that in Ex.M.11, the Security Bureau had directed the above said persons to report at its Office at

Coimbatore to deploy them at some other concern. The Learned Counsel would conclude the argument that there is specific factual finding that the

above six persons were not at all directly employed by the Bank and the question of termination by the Bank of their services does not arise at all

and therefore, there is no violation of Section 33 of the Industrial Disputes Act. Further according to the Learned counsel, the Award of the

Industrial Tribunal does not require any interference at the hands of this Court.

8. I have considered the above submissions.

9. There is no controversy before this Court that there was conciliation proceedings pending before the Conciliation Officer and due notice was

served on the Bank on 26.02.1986 itself. Now, the Court has to answer the question as to whether there was any violation of Section 33 of the

Industrial Disputes Act committed by the Bank. In my considered opinion, as rightly pointed out by the Learned Counsel for the respondent Bank,

the question of getting permission would arise only if the employer wants to change the conditions of service of the workmen. In this case, factually,

it was in dispute as to whether the above six persons were workmen and whether the Bank was the employer or not. This factual dispute has been

answered by the Industrial Tribunal on appreciating the oral as well as documentary evidences. Unless such finding of the Industrial Tribunal on the

above factual aspects is found to be either perverse or the same is based on no evidence, this Court cannot interfere with the same by exercising its

powers under Article 226 of the Constitution of India. From Ex.M.3, it has been established by the Bank that there was an agreement between the

Bank and the Security Detective Bureau under which, the Detective Bureau deployed these six persons to provide security to the Bank premises.

The other documents commencing from Ex.M.4 to M.13 would go a long way to show that these six persons were employed only by the Security

Detective Bureau and they were deployed to provide security in terms of the contract with the Bank. Absolutely, there is no document to show

that these six persons were employed by the Bank. Thus, the factual finding given by the Industrial Tribunal cannot stated to be perverse requiring

interference at the hands of this Court.

10. When once the conclusion arrived at by the Industrial Tribunal that these six persons were not workmen and that the Bank is not their

employer is accepted, then it goes without saying that there is no violation of Section 33 of the Industrial Disputes Act. As I have already stated

seeking permission to change the conditions of service of the workmen would arise only if the employer and the workmen status is proved.

11. The contention of the Learned Counsel for the petitioner that there is no finding by the Industrial Tribunal specifically to the effect that there is

no violation of Section 33 of the Industrial Disputes Act deserve no consideration as the employer and workmen relationship has not been proved.

Thus, the award of the Industrial Tribunal is perfectly in order which does not require any interference at the hands of this Court. In the result, the

writ petition fails and the same is dismissed. No costs.