(2013) 11 AP CK 0001

Andhra Pradesh High Court

Case No: W.P. No. 18928 of 2007

G.M		APPELLANT
	Vs	
Secretary,Ministry of Labour and Employment		RESPONDENT

Date of Decision: Nov. 1, 2013

Citation: (2014) 2 ALT 303

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dama Seshadri Naidu, J.

The petitioner in the writ petition is Oriental Bank of Commerce, which is a scheduled nationalised bank. It has filed the present writ petition seeking judicial invalidation of the action of the 1st respondent in referring to the 2nd respondent the matter of regularisation of the services of the 3rd and 4th respondents through order No. L-12012/114/2006-IR (BII) dated 06.07.2007, as illegal, arbitrary and wholly without any power or jurisdiction. The facts in brief are that initially Global Trust Bank was in existence carrying on its activities as a private bank. As it is common knowledge, in course of time, the said bank has faced existential difficulties and consequently got amalgamated with the petitioner bank, which has under an arrangement taken all its work force as well as its assets and liabilities. Now the issue concerns certain employees or workmen who have remained in the fringe. It is the case of the petitioner that the respondents 3 & 4 have never been part of the mainstream work force of the Global Trust Bank, but they were engaged through outsourcing agency. Be that as it may, these employees i.e., respondents 3 and 4, were once discharging their duties either through an outsourcing agency or otherwise, but in relation to the affairs of the Global Trust Bank.

2. It has come on record that on 28.10.2005, the petitioner bank has come up with a policy of absorption of certain category of employees. In fact, this absorption was confined to only a few types of employees whose details have been provided in the

said policy. To dilate on the policy adopted by the petitioner bank, it is appropriate to extract what has been spelt out in the said policy notification, which is as follows:

The Board of Directors of the Bank have now approved as a special case which shall not constitute as a precedent that the persons working as Data Entry Operator/Telephone Operator/Runner/Office Boys at different branches/offices of GTB through various outsourcing agencies as on the date of amalgamation of GTB with our Bank i.e., 14.8.2004 will be absorbed. The basic eligibility criterion approved for such absorption is that such person should have worked in the Bank as on 14.8.2004.

3. From the above, it is evident that the services of Runner staff/Office boys and Data Entry Operators/Telephone Operators were sought to be absorbed in the petitioner bank, subject to the qualifications that have been laid down in the said notification. Though the respondents 3 and 4 do not fall into either of those categories, they made their applications on 12.11.2005 along with the required enclosures seeking their absorption into the petitioner bank as being the erstwhile employees of Global Trust Bank or its agency. Incidentally, both the respondents 3 and 4 are drivers, but under the designation column they have indicated ''Junior Assistants''. It is stated that in course of time, their applications were not considered and they were not taken into work force of the petitioner bank. Aggrieved thereby, the respondents 3 and 4 approached the Additional Conciliation Machinery, which having tried to conciliate the issue, on its failure, referred the matter to the Central Government. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 ("the Act" for brevity), the Central Government has referred the said dispute for adjudication to the 2nd respondent through its proceedings dated 06.07.2007. The petitioner bank, aggrieved by the said reference, has come before this Court by filing the present writ petition.

4. The respondents 3 and 4, being the affected persons, whose dispute has been referred to the 2nd respondent, filed their counter affidavit contending that the Central Government has properly exercised its jurisdiction after due application of mind and that since there was patent discrimination in the approach of the petitioner bank, it is just and proper on the part of the Central Government to make the reference. It is the case of the respondents 3 and 4 that they worked for more than 240 days in the petitioner bank directly consequent upon the amalgamation of the Global Trust Bank with the petitioner bank, which took place on 14.08.2004. As such, the termination of their services, without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 is illegal and arbitrary.

5. It has further been contended that they have also rendered one year service with the petitioner bank from 14.08.2004 to 28.09.2005, putting in more than 240 working days during the said period; as such, whatever is the contract that came to prevail between the erstwhile Global Trust Bank and M/s. Global Corporate Services

Limited, cannot have any bearing on the rights that have accrued in favour of the respondents 3 and 4. It has also been contended that when the petitioner bank has absorbed the categories such as runner staff, office boys, data entry operators, telephone operators, etc., it has to be kept in mind even the respondents 3 and 4 have also rendered their services in different capacities and they as well be treated as office boys/helpers. They only worked, it is asserted, as drivers in addition to being office boys, helpers during bank hours. Mere designation one way or the other would not have disentitled them to have their services regularised. Based on these issues, the respondents 3 and 4 have defended the reference made by the Central Government.

6. Heard Sri. Dr. K. Lakshminarasimha, the learned counsel for the petitioner, Sri. William Burra, the learned counsel for the respondents 3 and 4, as well as the learned Assistant Solicitor General, apart from perusing the record.

7. The learned counsel for the petitioner bank has strenuously contended that the reference made by the Central Government i.e., the 1st respondent, is an instance of patent non-application of mind, apart from being one of lack of jurisdiction. In support of his contention, the learned counsel has taken this Court through Section 10 of the Industrial Disputes Act, which is as follows:

"10. Reference of disputes to Boards, Courts or Tribunals:-(1) [Where the appropriate Government is of opinion that any industrial dispute exists on is apprehended, it may at any time by order in writing,

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication;

Provided that where the dispute relates to any matters specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]"

8. Based on the above provision, it is submitted by the learned counsel that it is a sine qua non to make a reference only after having a reasonable ground of belief to entertain the opinion that there exists an industrial dispute or is apprehended to be in existence. In this case, it is contended by the learned counsel that the reference of

the 1st respondent is totally laconic without revealing any particulars that have weighed with the Central Government to refer the matter to the 2nd respondent to be adjudicated as an industrial dispute under the provisions of the Act. It is further submitted that the respondents 3 and 4 have never been part of the regular work force of Global Trust Bank, that their services were taken only on outsourcing basis, and that, accordingly, the petitioner bank was not bound to take them into service under whichever policy that was framed by the bank on 28.10.2005. The very application filed by the respondents 3 and 4 would indicate that they rendered their services through an outsourcing agency and that they have been disqualified as specified in the policy of the bank. Supplementing his submissions, the learned counsel has further stated that the Hon''ble Supreme Court has time and again laid down the formula under which the reference is required to be made. In the light of the principles laid down by the Hon''ble Supreme Court, the Central Government is not empowered to exercise its power u/s 10 of the Industrial Disputes Act. In the first place, it lacks the necessary jurisdiction to exercise the said power, and, assuming that it had such power, it had no justification as found in the order under reference to state that there were any justifying circumstances to make the reference. In support of his contentions, the learned counsel has placed reliance on two decisions rendered by the Hon''ble Supreme Court, viz., Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, and The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, .

9. Per contra, the learned counsel for the private respondents, i.e., respondents 3 and 4, has contended with equal vehemence that, in the first place, exercising the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India under the stated circumstances is totally unsustainable; secondly, the Central Government has got necessary power to make reference u/s 10 of the Act; and, in fact, there are ample circumstances available for the Central Government to exercise the said power. It is further submitted that the 2nd respondent Tribunal has already taken cognizance of the matter, and has proceeded further with the matter, in which both parties have participated.

10. It is brought to the notice of this Court that even the petitioner bank has entered its appearance and filed its counter, contesting the claim of the private respondents before the Tribunal. As such, the supplementary submissions of the learned counsel for the private respondents is that having questioned the jurisdiction of the 2nd respondent Tribunal and having participated in the proceedings, now the petitioner bank cannot turn back and assail the jurisdiction of the 2nd respondent and making the reference to the 2nd respondent exercising its power u/s 10 of the Industrial Disputes Act.

11. A perusal of Section 10 of the Act indicates what is required on the part of the Government is to exercise its opinion that an industrial dispute exists or is apprehending to have existed, and accordingly, at any point of time, it can refer a

dispute. The phraseology of the Section amply demonstrates that the reference is invariably based on the subjective satisfaction of the authorities. It is not only the existence of true or apparent industrial dispute, but even a mere apprehension is sufficient to make the said reference.

It bears repetition to state that the Act, 1947 is a beneficial legislation and it cannot be sacrificed on the altars of technicalities. Referring to the authorities relied on by the learned counsel for the petitioner, I am afraid they may not have much relevance to the issue on hand. First, dealing with the ratio laid down in case The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , this Court is of the opinion that the factual situation as obtained in the said decision is that the reference was assailed on the question of inordinate delay. Amplifying the common law principle, the Hon''ble Supreme Court has held that power of reference is to be exercised within a reasonable time, and in a rational manner, but not in a mechanical fashion. In fact, in the said case, the Central Government chose to refer the matter after a lapse of seven years from the date of dismissing the delinquents from service. Insofar as the other authority is concerned i.e., Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, , incidentally the ratio in the said judgment too runs on the same lines. The learned counsel has placed reliance on paragraph-8 of the said judgment, which is as follows:

"The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time-limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindle by making a reference of it to adjudication ? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this sub-section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complementary to each other. The Government''s power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government/it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference."

12. In fact, the answer to the issue raised in the said paragraph found explained in the subsequent paragraph by the Hon''ble Supreme Court:

"9. Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government''s power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which elapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed (sic) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute."

Applying the same ratio, it cannot be said in the present case that there is no industrial dispute.

13. Now, we may examine the ratio laid down in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , in which the Supreme Court has held that law does not prescribe any time-limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. Their Lordships have observed that there appears to them to be no rational basis on which the Central Government has exercised powers in the said case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.

14. In the said case what weighed with the Central Government for referring the matter to an Industrial Tribunal/Labour Court is: "The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned." In fact, in the present case, the reference was not based on the relief granted to somebody else. Suffice it to say, the Hon''ble Supreme Court has observed that as to when a dispute can be said to be stale would depend on the facts and circumstances of each case.

15. It is axiomatic that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expression, which may be found there, is not intended to be exposition of the whole law, but is governed and qualified by the particular facts of the case in which the expression or expressions are to be found. In other words, a case is an authority for which it actually decides. (See Quinn v. Leathern, (1901) AC 495), as relied on in Rajendra Singh v. State of U.P., (2007) 7 SCC 378 ; and also Sarva Shramik Sanghatana (K.V),

Mumbai Vs. State of Maharashtra and Others,).

16. It is too well established to be restated that no decision is binding as a precedent in another case if the material facts or issues in the latter are not identical inasmuch as there is no such thing as the judicial precedent of facts. (See Indus Airways Pvt. Ltd. and Others Vs. Magnum Aviation Pvt. Ltd. and Another, , and Willie (William) Slaney Vs. The State of Madhya Pradesh,) Suffice it to say that a little difference on facts or additional facts may lead to a different conclusion (See Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others,).

17. It is an entirely different thing that the workman may have a tenuous case on merit and the reference may eventually result in futility as far as the desired relief is concerned. Once a person has been provided with a judicial recourse to seek relief, the exercise of that remedy cannot depend on the outcome at the end of the proceedings. In this case, it cannot be stated that the Government lacks the power u/s 10 of the Industrial Disputes Act, to make the reference; in equal measure, nor can it be stated that there is no industrial dispute subsisting. It is quite appropriate to state that while interpreting any beneficial right, the technicalities must only play an enabling role, but not that of defeating or obfuscating. From what has been submitted by the learned counsel for the private respondents, the Labour court has already proceeded with the matter on merits in determining the rights of the parties. Even otherwise, it is too late in the day to interdict the proceedings at whatever length of time. Hence, it does not call for any interference by this Court.

18. In fact, in the present case, the petitioner bank has not assailed the reference being stale. It has contested the matter on the ground that even on reference, the Labour Court cannot give any positive direction in favour of the respondent workmen since the Hon''ble Supreme Court has decried the regularisation of the workmen whose entry into the organisation has been flawed. For the reasons stated above, this plea, I am afraid, cannot be sustained. For the reasons stated above, the writ petition suffers from lack of merits and deserves to be dismissed; it is accordingly dismissed. Needless to state that any observations made herein are only for the limited adjudicatory purpose, and the dismissal of the present writ petition cannot be taken as expressing any merit on the issue in any manner. There shall be no Order as to costs. As a sequel to it, miscellaneous petitions, if any pending in this writ petition shall stand closed.