(1976) 11 AP CK 0002

Andhra Pradesh High Court

Case No: W.Ps. 6021/74 and W.A. No. 891/75

K. Rajyalaxmi, Proprietor, Bus No. APV 3511 and 4922, Pool Bagh Road, Vizianagaram and others		APPELLANT
	Vs	
The Authority under Payment of Wages Act and Regional Assistant Commissioner for Labour, Visakhapatnam		RESPONDENT

Date of Decision: Nov. 9, 1976

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(k)

Hon'ble Judges: S.H. Sheth, J; Alladi Kuppuswami, J

Bench: Division Bench

Advocate: V. Jagannadha Rao, for the Appellant; P. Kodandaramayya, Advocate for the Respondent 2, for the Respondent

Final Decision: Dismissed

Judgement

S.H. Sheth, J.
Writ Appeal No. 891/75 is directed against the order made by the learned Single Judge in W. P. 7017/76. He confirmed the award or the Labour Court by his order.

2. The facts of the case briefly stated are as under. K.K. Motor Bus Service, The Rajyalakshmi Bus Service and the Kamalamma Bus Service had in their employment 15 workers. It appears that in 1970 the workmen were not given work- Therefore, they started agitating the dispute as to their wages. Conciliation proceedings were instituted. The management stated before the Conciliation to Officer that they did not terminate the services of the 15 workmen though they were not given any work nor were, hey paid their wage. The management had not actually terminated the services of the workmen by serving a notice upon them However, for the first time

in the conciliation proceedings the management stated that they had removed the names of the 15 workmen from their muster roll with effect from 17-12-1970 because they had been (sic) from duty for more than ten days. The conciliation proceedings failed and the Conciliation Officer reported accordingly to the Government. The Government found that there was an industrial dispute between the management and the workmen and, therefore, referred it to the Labour Court, Guntur, under the Industrial Disputes Act.

3. Before the Labour Court it was contended by the management that the services of the 15 workmen had not been terminated by them and that therefore reference winch was made was invalid because there was no industrial dispute between the parties. The contention which the workmen raised was that their services had been terminated. The Labour Court recorded the conclusion that the reference was invalid because there was no industrial dispute as the workmen had not made a demand for reinstatement and the management had not refused to accept it. The Labour Court also went into the question in the alternative of retrenchment compensation payable to these workmen and recorded its finding. Ultimately, the Labour Court rejected the reference on the ground that it was invalid and made its award accordingly.

4. That award was challenged by the workmen in W.P. 7017/74. The learned Single Judge who heard the petition concurred in the finding recorded by the Labour Court that since there was no demand by the employees and refusal by the management the reference was invalid. He therefore, dismissed the petition. He also quashed the alternative finding which the Labour Court recorded on the question relating to retrenchment compensation payable to the workmen. It is that order which is challenged by the workmen in this writ appeal.

5. The first contention which has been raised by Mr. Kodandaramayya, who appears on behalf of the workmen, is that the finding that the reference was invalid is not sustainable in law. He has argued that there is no particular form in which the demand for reinstatement should be made by the workmen. According to him if the facts of the case showed that the workmen had made the demand for reinstatement it was sufficient to satisfy the requirements of law. In order to appreciate the contention which he has raised, it is necessary to note a few facts about which there is no dispute in November 1970 the workmen were told by the management that the buses had been stopped because some differences in cash collections were required to be checked and that there was no work. From 21-07-70 till the end of the month the workmen worked but they were not paid their salaries for October and November 1970. The workmen had formed a Union in July, 1970 and through their Union claimed wages, Dearness Allowance House Rent Allowance, daily batta etc, in terms of the recommendations of the Central Road Transport Wages Board which had come into effect from 1-4-1969. It appears that the management was annoyed at the demands made by the workmen. Therefore, their salaries for the months of

October and November were not paid. From 16-10-1970 they were ordered to stand by and were not allowed to run the buses while the management ran the buses daring that period by employing daily workers on low wages. The Workmen''s Union, therefore, represented to the management and got a reply from the management that within a day or two the buses would be placed in their charge. Every day they were asked to stand by. Hiving been aggrieved by the attitude which management had been taking, the workmen through their Union reported it to the District Labour Officer, Srikakulam, because they suspected that there was some sinister or ulterior motive on the part of the management to dispense with their services. Before representation to the Labour Officer was made there was no reaso a for the workmen to entertain any apprehension because they were only asked to stand by and the management had engaged casual stuff to check up the causes of frequent repairs which the buses required and also to check up the deficiency in the cash collections, the Labour Office, therefore, advised the management to permit them to run the buses and to pay their salaries for the month of October, 1970. That advice was not heeded to by the management and the workmen were again asked to stand by without any work until 26-11-1970. On 26-11-1970, they were allowed to resume duties but when the workmen returned to the depot in the evening with their buses and paid cash collections to the management they were confronted with a complaint made by the management to the police of Vizianagaram that the workmen had forcibly and unauthonsedly taken away the buses and piled them on the routes. The management also complained that they had displaced the daily casual labour which they had employed. It appeared to the police that the complaint made by the management was totally false and concocted. However, the management even thereafter failed to give work to the workmen. They did not do anything nor did they pay their wages to the workmen. The workmen, therefore, applied to the Payment of Wages Authority for recovery of their wages for the months of October and November, 1970. At that time the management put forward the plea that the services of the workmen had been terminated on account of their long absence from duty and their failure to join duty to in spite of the notice served upon them by which they were warned. It appears that the workmen had received no such notice. On these facts the Labour Court and the learned Single Judge came to the conclusion that the reference was invalid because the workmen had made no demand for reinstatement and there was no refusal on the part of the management to reinstate them. In our opinion the conclusion recorded by the learned Single Judge and the Labour Court is not justified on the facts of the present case, firstly, because there is no particular form in which demand should be made and there is no particular form in which refusal should be communicated. The facts clearly show that since 26-10-1970 not only the workmen had not been paid their wages but they had been asked to stand by. Secondly, the Workmen were very eager to join duty and to operate buses. It was the management which came in their may and asked them to stand by until the cheek up which the management wanted to carry out was completed. It appears that the workmen were lulled into the belief that they would

be given work. Ultimately no work was assigned to them and when the dispute arose between the parties it was contended that they are long absent from duty and had been removed from service on account of their long absence from duty which the management referred to was not on account of any act of omission or commission on the part of the workmen but it was wholly on account of the act or omission on the part of the management which did not assign any work to them. The eagerness and anxiety on the part of the workmen to resume duty showed that they had been demanding work which in our opinion amounted to demand for reinstatement, if they were removed from service. The false belief into which the management has been lulling them without doing anything to assign work to them clearly shows that the management had no mind to assign any work to them. That fact is sufficient, in our opinion, to show that the management bad refused the demand for reinstatement. If an employer does not pay to his employee his wages and does not allow him to work then it is clear that he does not want the employee to continue in service even though he may not have formally removed him from service. If an employee under the aforesaid circumstances shows eagerness and anxiety to join his duty and to do the work it is nothing but demand on his part to be reinstated in to service from which he was virtually removed on account of non-assignment of work.

6. It is also worthy of note that in the counter statement which the management filed before the Labour Court they did not take up the plea that there was no demand by the workmen to be reinstated and that, therefore, the reference made to the Labour Court by the Government was invalid. However, in support of the contention which Mr. Kodanda Ramaiah has raised before us he has invited our attention to a few decisions to which we are making a brief reference. It appears that reliance was placed by the Courts below on the decision of the Supreme Court in The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, In that case no specific order was passed terminating the services of the workmen, What happened in that case was a permanent employee of Sindhu Resettlement Corporation Ltd., was transferred to join the services of Sindhu Hotchief in 1953. It was contended by the workman that he bad gone to Sindhu Hotchief on deputation or transfer and that therefore he had continued to hold a lien on his permanent post in the Sindhu Resettlement Corporation Ltd., Sindhu Hotchief was only a subsidiary of the Sindhu Resettlement Corporation Ltd., Since he was transferred to join Sindhu Hotchif no specific order was passed terminating his services in the Sindhu Resettlement Corporation Ltd. The Supreme Court came to the conclusion that the workman was appointed in Sindhu Hotchief under the order which land down that in that company he would be on probation for a period of 3 mouths in the first instance. However he continued to serve the Sindhu Hotchief for a period of 4 1/2 years long after his probation period had expired. He was held to have been confirmed in his post in the Sindhu Hotchief. The Supreme Court, therefore, held that he could not continue to be an employee of the Sindhu

Resettlement Corporation Ltd., simultaneously. Under these circumstances the point which came to be agitated by the workman related only to his retrenchment compensation. The fact that he claimed retrenchment compensation also showed that he had not continued in the service of the Sindhu Resettlement Corporation Ltd. It was on 21-2-1958 that the workman in that case demanded reinstatement by the Sindhu Resettlement Corporation Ltd., and the latter refused that demand of his. Soon thereafter the workman made a request for retrenchment compensation and one month''s, salary in lieu of notice. The Supreme Court, however, came to the contusion that even though Sindhu Resettlement Corporation Ltd had by an office order placed the services of the workman at the disposal of Sindhu Hotchief unless the workman had voluntarily agreed to join service in Sindhu Hotchief he would not have joined that company. When later on he was retrenched by the Sindhu Hotchief he could not claim reinstatement in Sindhu Resettlement Corporation Ltd., Under these circumstances all that the workman in that case claimed was retrenchment compensation and not reinstatement under Sindhu Resettlement Corporation. The principal laid down by the Supreme Court in that case has therefore no application to the facts of the present case.

7. The next decision to which the learned counsel has invited our attention is in Management of Rodio Foundation Engineering Ltd. and Another Vs. State of Bihar and Others, decided by a division Bench of the Patna High Court. It has been held therein that the dispute about the reason for stoppage of work is an Industrial dispute within the meaning of section 2 (k) and that in such a case no specific demand by the workmen is necessary to bring into existence an industrial dispute. The sine qua non of the exercise of power to make a reference is that in the opinion of the appropriate Government and industrial dispute must exist or that there must be an apprehension in regard to it. It has also been observed by the Patna High Court that a dispute need not necessarily be preceded by a demand and a refusal in express terms by the parties concerned.

8. In the instant case also there was no express demand and there was no express refusal. However, the workmen had been agitating the question and asking the management to assign work to them and that the management had been refusing to do so. Therefore, what they really were doing was to demand reinstatement as if they were removed from service and it was negatived by the management.

9. The next decision to which our attention has been invited is in The State of Madras Vs. C. P. Sarathy AIR 1973 SC. 53. In that case 24 cinema companies in the State of Madras received from their employees through their association certain demands. The Government referred those demands to the Industrial Tribunal. The Supreme Court came to the conclusion that 15 out of 43 workman of Prabhat Talkies were admittedly members of the Association which had figured as one of the parties to the dispute. Therefore, they observed that the Government might have thought without a close examination of the conditions in each individual establishment that

disputes which affected the workmen collectively existed in the cinema industry in the City and that, even if such disputes had not actually existed in any particular establishment, they could, having regard to their collective nature, will be apprehended as imminent in respect of that establishment also. In that case notices were issued by the Tribunal to all the 24 companies and they had filed written statements of their case in answer to the demands made by the Workmen''s Association. Under those circumstances the Supreme Court observed that it was idle to claim that the Government had no jurisdiction to make the reference and that the award was not binding on them. The last decision in which our attention has been invited by Mr. Kodandaramayya the learned counsel, is in Dhanapal Bus Service (P) Limited Vs. K.R. Venkatesan and Others, It was contended in that case that there was no demand made by the workers against the management in the usual manner and that, therefore, the reference made to the Industrial Tribunal was bad. While answering this convention it has been stated in the decision that it was too late in the day for the management to take up this contention, According to them the fact that there were conciliation proceedings before the Labour Officer which failed and the fact that consequent upon such failure a reference was directed to be made by the State Government under the Industrial Disputes Act showed that the workers had made the demand.

10. In reply it has been contended by Mr. Jagannatha Rao that the Secretary of the Workmen''s Union in the instant case had not sent a demand notice stating that the workmen were willing to work and join duty. He has in support of his contention tried to rely upon two decisions.

11. The first decision is in The Jaipur Udyog Ltd. Vs. The Cement Work Karmachari Sangh, Sahu Nagar, The tribunal in that case relied on the age of superannuation of the workmen in support of his retirement. The Supreme Court came to the conclusion that the question relating to the superannuation age of the workman had not been referred by the Government of Rajasthan not was it shown that there was any basis for apprehension of such a dispute. It was in that context that the Supreme Court held that the Tribunal had gone beyond the scope of the reference. The Supreme Court further held that the Tribunal had never addressed itself to the point of view of the workmen that his proper age of only 50 and not 55 nor had it recorded the finding that the correct age of the workman being 50 in 1968 there was no question of his superannuation in that year. The principal laid down in that decision cannot be applied to the facts of the instant case because the workmen with whom we are concerned in this appeal had been continuously demanding assignment of work to them in order that they might resume their duties.

12. The next decision on which reliance has been placed by Mr. Jagannatha Rao is in M/s. Star Paper Mills Ltd. V. Industrial Tribunal 1976 1 I.F. & L.R. 43. The Allahabad High Court has in that case said down that industrial disputes can be said to have arisen and to be in existence only when the demand is made by the workmen and is

rejected by the Management. If a demand is made by the workmen and is accepted by the employer and if the workmen are satisfied no industrial dispute win ever come into existence.

13. It cannot be gainsaid that there should be a demand by the workmen and refusal to grant it by the management. But it does not mean that the demand should be made in a particular form. If the facts and circumstances of the case show that the workmen had been making the demand which the management had been refusing to grant them it can be said that there was an industrial dispute between the parties. As stated above, in the instant case the workmen had been persistently claiming not only their wages but demanding assignment of work to them and the management had been refusing to accede their demands, Under these circumstances in our opinion then the government made the reference to the Labour Court there was a demand by the workmen and refusal by the management to grant it. Therefore, there was an industrial dispute existing between the parties. In that view of the matter, the reference which the State Government made to the Labour Court was a valid reference and the learned Single Judge, with respect to him and the Labour Court were in error in holding that the reference was bad in law. We, therefore, set aside that finding and hold that the State Government had made a valid reference to the Labour Court.

14. Mr. Kodandaramayya has asked us to accept the finding on merits recorded by the learned Single Judge. We are unable to do so because after it held that the reference which the State Government made was bad in law all that the Labour Court concentrated on, in order to record the finding on merits, was the question which related to retrenchment compensation. When we find that the reference made by the State Government was valid the reference would have to be tried on merits from an altogether different angle. Not only the workmen would be entitled to agitate the question of reinstatement bit they would also be entitled to agitate the question of compensation for wrongful termination of their services in case it was found that the facts and circumstances of the case would not warrant their reinstatement. In other words, the entire complexion of the case could change. Therefore, though Mr. Kodandaramayya has asked us to restore the finding recorded by the Labour Court it would be unfair to the workmen if we accepted his request. The workmen would be entitled to agitate better rights before the Labour Court if we remand the case to it. We are, therefore, of the opinion that the case should be remanded to the Labour Court for a fresh trial on merits according to law and in the light of the observations which we have made in this judgment.

15. So far as the these writ petitions are concerned, they arise under the following circumstances. The workmen who were not paid their salaries filed cases before the Payment of Wages Authority for their recovery. The Payment of Wages authority dismissed their petitions because an industrial dispute had peen pending before the Labour Court. The workmen appealed against that order to the appellate Authority.

The appellate authority set aside the order made by the Payment of Wages Authority and remanded the cases to it. After the cases were remanded to the Payment of Wages Authority the management filed these writ petitions praying for a writ of prohibition against the Payment of Wages Authority on the ground that since an industrial dispute has been pending the Payment of Wages Authority has no jurisdiction to entertain those applications. Since we are remanding the reference to the Labour Court the workmen shall be at liberty to raise all the contentions there. Therefore, though it appears to us that the proceedings before the Payment of Wages Authority are unnecessary. Mr. Kodandaramayya states to us that in the proceedings before the Payment of Wages Authority there are some workmen who are not parties to the reference before the Labour Court and who are making their claims before the Payment of Wages Authority. Mr. Jagannatha Rao on the other hand states to us that workmen who are parties to the reference are the only workmen who are parties to the proceedings before the Payment of Wages Authority. We do not propose to decide this controversy at this stage. We think that interests of justice will be served if we direct that Payment of Wages Authority to stay further proceedings in those cases until the Labour Court decides the reference on merits after remand. The Payment of Wages Authority shall thereafter take up the Proceedings and if there are any workmen whose claims have not been adjudicated upon by the Labour Court on account of their not having been parties to the reference he shall decide their claims. In the result we allow the appeal, set aside the order made by the learned Single Judge and quash the impugned award. We remand the reference to the Labour Court at Guntur with a direction that it shall adjudicate on merits the demands made by the workmen and referred to it by the Government and shall make any appropriate award in that behalf. The parties shall be at liberty to raise such contentions before the Labour Court as or open to them within the frame work of the reference except the contention relating to the validity of reference. So far as the writ petitions are concerned we direct the Payment of Wages Authority to stay all further proceedings in the cases pending before him until the Labour Court finally decides the reference and to take up thereafter only for the purpose of adjudicating upon the claims made by those workmen who are not parties to the reference. Subject to this direction all the three writ petitions are dismissed. There shall be no order as to costs in the writ appeal as well as in the writ petitions.