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(2002) 6 ALT 742

Andhra Pradesh High Court

Case No: Writ Petition No"s. 12924 of 1994 and 13189 of 1996

Hylam Employees Consumer Co.op. Stores		APPELLANT
	Vs	
Additional Industrial Tribunal-cum-Labour Court and Others		RESPONDENT

Date of Decision: April 9, 2002

Acts Referred:

- Andhra Pradesh Shops and Establishments Act, 1988 - Section 72
- Industrial Disputes Act, 1947 - Section 33C(2)

Citation: (2002) 6 ALT 742

Hon'ble Judges: Ghulam Mohammed, J

Bench: Single Bench

Advocate: S. Ravindranath, for the Appellant; Govt. Pleader for Labour for Respondent Nos. 1 and 4 in W.P. No. 12924/94 and for Respondent No. 1 in W.P. No. 13189/96, A.K. Jayaprakash Rao, in W.P. No. 12924/94, V. Narasimha Goud, in W.P. No. 13189/96, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ghulam Mohammed, J.
The above two writ petitions have been preferred by the Management. W.P. No. 12924 of 1994 pertains to M.P. No. 167 of 1988 wherein the workman claimed Rs. 32,500/- u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act") before the Additional Industrial Tribunal, Hyderabad. The said M.P. was allowed by the Tribunal awarding a sum of Rs. 32,500/- on 19th October, 1993, towards subsistence allowance, bonus and salary from the date of suspension i.e., 27-7-1988, Whereas W.P. No. 13189 of 1996 pertains to M.P. No. 39 of 1984 wherein the workman claimed Rs. 63,813/-

towards the subsistence allowance for the total period of 33 months i.e., from September, 1988 to May 1991 at the rate of Rs. 650/- p.m. which comes to Rs. 21,450/-, wages as per the orders passed in S.C. No. 14 of 1991 from 31-5-1991 till date i.e., upto 1994 at the rate of Rs. 810/- p.m., which comes to Rs. 33,210/- and towards V.D.A. benefit from April 1991 to October 1994 which comes to Rs. 9,153/-, u/s 33-C(2) of the Act before the Additional Industrial Tribunal, Hyderabad. The said M.P. was allowed by the Tribunal awarding a sum of Rs. 63,813/- on 28th December, 1995, towards the monetary benefits due to the workman. Having aggrieved by the orders of the Tribunal, the present writ petitions have been preferred by the Management.

2. The writ petitioner in both the writ petitions, is the Management and the 2nd respondent is the workman and they will be referred to as Management and workman for the sake of convenience.

3. Since the parties are one and the same and the question involved is also one and the same, both the writ petitions are being disposed of by a common order.

4. Heard Mr. S. Ravindranath, the learned counsel for the petitioner and Mr. Narasimha Goud, the learned counsel for the workman.

5. The learned counsel for the Management would contend that in view of the cumulative effect of Sections 15, 16, 17, 17-A and 17-B of the Act and the definition of expression "Award" under the Act, the award passed by the Tribunal under the Act, cannot be equated to that of an order passed by a quasi judicial functionary. He would further contend that there is an enforcement agency provided under the A.P. Shops and Establishment Act which is a self contained Act and there is a recovery machinery contemplated under the Act, but without resorting to avail such remedy contemplated under the Act, the workman filed an application u/s 33-C(2) of the Act, which is impermissible. He would further contend that the order of the Assistant Commissioner setting aside the termination order, cannot be equated to that of an award made under the provisions of the Act. In support of his contention that it excludes the jurisdiction of a Labour Court to hear an application u/s 33-C(2) of the Act, he relied on a Division Bench Judgment of this Court in W.P. No. 5494 of 1971 and 3390 of W73, dated 26th July 1973 wherein while dealing with the provisions of the Shops and Establishment Act, 1966 which are analogous to Section 48 of the Shops and Establishments Act, 1988, it is held as under:

"We are told that the District Munsifs have been appointed as the judicial authority to hear and decide the claims. What is thus plain is that claims in regard to wages or gratuity arising under the Act can be got decided only before the judicial authority constituted by the Government u/s 43 of the Act. It could not be doubted before us that the judicial authority so constituted has exclusive jurisdiction to decide the claims arising under the Act and since the Act is a self contained Act and provides its own machinery for disposal of the claims, it must follow that the judicial authority is an exclusive authority and all.

claims arising under the Act must have to be filed only before the said authority and no other. By necessary implication, it excludes the jurisdiction of a Labour Court to hear an application u/s 33-C(2) arising under the provisions of the Shops and Establishments Act."

6. He has drawn my attention to the decision of the Apex Court reported in State of Punjab Vs. Labour Court Jullunder and Others, , wherein the workmen were employed as work charged employees and on completion of the work assigned to them, they were retrenched and retrenchment compensation was paid to them, but the workmen claimed that they were also entitled to gratuity, bonus and certain other allowances and benefits. In such circumstances, the Apex Court while distinguishing the words "retirement" and "termination" held that any termination of service would amount to retirement and retrenchment is a termination of service and the retrenchment of the employee falls within the scope of Section 4(1) of the Payment of Gratuity Act and the employees are therefore entitled to gratuity under that provision and that the applications filed by the employee u/s 33-C(2) of the Industrial Disputes Act did not lie and the Labour Court has no jurisdiction to entertain and dispose of them. But, on a perusal of the entire material on record of the case on hand, the dispute in question comes under the purview of neither termination of service nor retrenchment, but this is an out come of an order on the enquiry conducted u/s 52 of the A.P. Co-operative Societies Act, resulting in removal of workman from the service on the ground of misappropriation. In such a situation, with due respect to the principles laid down by the Apex Court, the facts and circumstances mentioned therein, are quite different from that of the case on hand and as such, the same has no application to the facts of the case on hand.

7. On the other hand, the learned counsel for the workman would contend that the Management disputes the calculations, and there was no pleading with regard to the jurisdiction u/s 33-C(2) of the Act, and, as such, the Management cannot be permitted to contend that the application u/s 33-C(2) of the Act, is not maintainable. He would further contend that the provisions of Section 63 of the A.P. Shops and Establishments Act, 1966 is analogous to that of Section 72 of the A.P. Shops and Establishments Act, 1988, which reads as under:

"Rights and privileges under other laws etc., not effected - Nothing in this Act shall effect any rights or privileges, which any employee in any establishment is entitled to, on the date on which this Act applies to such establishment, under any other law, contract custom or usage application to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act."

8. He relied on a decision of this court reported in APSRTC, Mushirabad, Hyd. and another Vs. M. Ramulu and another, , wherein it is held thus:

"The Counsel for the respondent further contended that neither the Conduct Regulations nor the Service Regulations provide for putting any employee "off-duty". That was neither

a punishment nor an intermediate measure in aid of any punishment prescribed under the Service Regulations. The learned counsel for the respondent further contended that the petitioner-Corporation had forcibly prevented the respondent from rendering services to the petitioner-Corporation during subsistence of employer-employee relationship. The principle of "no work no pay" is not attracted since the corporation has passed an order on 14-3-1995 factually preventing from his duty and on the same day chargesheet was issued invoking the Employees (Conduct) Regulations 28 (ix-b) 1969 and asked him to submit his explanation. Thereafter, a regular enquiry was conducted and ultimately the services of the respondent No. 1 was terminated by passing an order on 20-10-1995. It is necessary to extract Section 33-C(2) of the Industrial Disputes Act, 1947 which reads as follows:

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government "within a period not exceeding three months".

A perusal of the said section clearly discloses that the Labour Court acting u/s 33-C(2) is competent to entertain and make an award or settlement under Chapter V-A of the Act. Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit, on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen"s right rests."

9. In E. Manu Swamy Vs. Depot Manager, APSRTC, Kukatpally Depot, Hyd. and another, , this court observed that the workman cannot be made to suffer due to the lapse on the part of the respondents in reinstating him into service.

10. In M. Krishnamurthy v. Assam Tea Depot, 1976 (1) (HC) APLJ 291 the Division Bench of this Court while observing that the Workman is not debarred from moving the Labour Court u/s 33-C(2) of the Industrial Disputes Act for recovery of the money or other benefits due to him under the A.P. Shops and Establishments Act, held thus:

"Section 33-C(2) is a beneficial provision providing for a prompt and cheap remedy to a workman to receive and realize the money or other benefits due to him, either under a settlement, or award or any other provision of law, and without being affected by the provisions of the Limitation Act. It is not necessary that the money or the benefit should be due to the workman only under the provisions of the Industrial Disputes Act; the money or benefit due to a workman under any other law, can also be worked out and recovered under the said provision.

In the face of the express saving provision contained in Section 63 of the State Act, there is no room for contending that the procedure and forums created by the State Act are of an exclusive nature, barring the jurisdiction of the Labour Court to entertain applications u/s 33-C(2) of the Industrial Disputes Act. The obvious intention of the Legislature in enacting Section 63 was to clearly save the remedies available to workmen under other enactments.

Whether the procedure prescribed by the State Act is more favourable, or whether the procedure prescribed by any other Act is more favourable to an employee, should be left to him to decide. In other words if he chooses to adopt the remedy u/s 33-C(2) of the Industrial Disputes Act, an authority cannot say that the remedies provided by the State Act are more favourable to him and thereby compel him to adopt the remedy under the State Act."

11. In Amarthalur Co-op. Rural Bank Ltd. v. Ponnuru Nageswara Rao, 1977 (2) LLJ 401, the Division Bench of this court held thus:

"Where the management is not clothed with power under any rule or bye law to suspend a workman pending enquiry, the workman will be entitled to receive full wages for the period of suspension as the conditions of his service do not disentitle him to receive such wages. A claim u/s 33-C(2) is therefore maintainable".

12. In support of his contention that there is no inconsistency with regard to the provisions of Shops and Establishments Act and the Industrial Disputes Act and both of them are supplemental to each other, he relied on a decision of the Apex Court reported in National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, , wherein it is held thus:

"The Industrial Disputes Act and the Rajasthan Shops and Establishments Act of 1958 tread the same field. Both these Acts deal with the rights of the workman or employee to get redressal and damages in case of dismissal or discharge, but there is no repugnancy because there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two Acts. These two Acts are supplemental to each other."

13. In support of the contention that mere suspension of a workman does not disentitle his statutory eligibility for bonus, he relied on a decision reported in Project Manager Ahmedabad v. ONGC Sabarmati S.K. Sahegal, 1994 Lab.II.C. 2086, wherein it is held that suspension and reinstatement of employee cannot be viewed that such employee did not work in the establishment and his statutory eligibility for bonus could not be said to have been lost. In T. Narayana Vs. Managing Director, APSRTC, Hyd. and Others, , this court has held that ordering of reinstatement by the Tribunal, is deemed to be in service during the period, he was out of employment and his salary has to be computed taking into account the periodical increments he would have earned had he been not removed from service.

14. In the instant case, an enquiry was conducted against the workman on the ground of misappropriation and his services were terminated u/s 47 of the A.P. Shops and Establishment Act by order dated 31-5-1991. Aggrieved by the same, the workman preferred an appeal u/s 48 of the A.P. Shops and Establishments Act before the Assistant Commissioner of Labour who in turn having considered the same set aside the order of termination and directed the workman to be reinstated with full back wages and continuity of service. The said order has not been challenged by the Management, so that it has become final. So, there is no dispute as to the order of reinstatement, but the only controversy that arises for consideration is whether the workman can seek the shelter of Labour Court for recovery of the amounts due to him.

15. Be that as it may. The workman filed M.P. No. 167 of 1988 claiming subsistence allowance due to him and M.P. No. 39 of 1994 claiming the monetary benefits as already mentioned above, due to the petitioner. The Tribunal having considered the contentions on either side, allowed the claim of the workman in both the petitions. Having aggrieved by the same, the above writ petitions have been preferred.

16. In a wider sense, the provisions of Section 72 of the A.P. Shops and Establishment Act has given privileges to a workman and it contemplates that this Act will not come in the way of any employee, who is entitled to any rights or privileges under any other law, contract, custom or usage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he is entitled under this Act. At this juncture, it is pertinent to note that the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947 contemplates that Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government "within a period not exceeding three months".

17. As such, the provisions of Section 33-C(2) of the Industrial Disputes Act, is nothing but a beneficial legislation to the workman to receive and realise the money or other benefits due to him by way of settlement or award or any other provision of law. It need not be necessary that that the money or the benefit should be due to the workman only under the provisions of the Industrial Disputes Act. The money or the benefit due to a workman under any other law, can be effected recovery under the provisions of the Industrial Disputes Act.

18. The legal proposition relied on by the Management, is not in any way helpful to the case whereas the legal propositions relied on by the workman lend support to his contention that the provisions of A.P. Shops and Establishment Act, do not bar the jurisdiction of the Labour Court to entertain the petition u/s 33-C(2) of the Industrial Disputes Act, and, they lend full support to the case of the workman on hand.

19. In the facts and circumstances of the case, I am of the considered view that the order of the Labour Court is clear, cogent and clinching, and, it does not suffer from any illegality and does not warrant any interference by this court.

20. Accordingly, both the above writ petition, are dismissed and the orders of the Labour Court, are hereby confirmed.

However, there will be no order as to costs.