(2011) 09 MAD CK 0145

Madras High Court (Madurai Bench)

Case No: W.A. (MD) No. 935 to 937 of 2010, M.P. (MD) No''s. 1, 1 and 1 of 2010

The Management, The India Cements Ltd.		APPELLANT
	Vs	
Cement and Quarry Workers Union		RESPONDENT

Date of Decision: Sept. 14, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 10(1)

Hon'ble Judges: P. Jyothimani, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: Jayaraman for A. Veerasamy, for the Appellant; S.M. Mohan Gandhi, for Respondent 1st, A.B. Nagarajan, for Respondents 2 and 3 in W.A. (MD) No. 935 and 936 of 2010 and K. Ayyannar, for Respondents 2 and 3 in W.A. (MD) No. 937 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, J.

Considering the fact that the Appellant and Respondents in all these Writ Appeals are one and the same and the issue involved is also one and the same, the Writ Appeals have been taken up together and a common judgment is passed.

2. The Respondent No. 1 raised a dispute against the transfer of his members and the conciliation officer sent failure reports to the Respondent No. 2. Upon receipt of the said reports, the Respondent No. 2 declined to refer the dispute by holding that an order of transfer is prerogative of the management. Challenging the same, the Respondent No. 1 filed writ petitions, which have been allowed directing the second Respondent to refer the adjudication pertaining to the three workmen of the Respondent No. 1 Union to the Central Industrial Tribunal. Challenging the common order passed by the learned Single Judge, these appeals have been filed.

3. Submissions of the Learned Counsel appearing for the Appellant:

Shri. Jayaraman, learned Senior Counsel appearing for the Appellant submitted that the claims made by the Respondent No. 1 in all these claims are stale. When the workmen have joined the transferred places without protest, it is not open to the Union to raise the same as dispute after a considerable length of time. The dispute is sought to be raised after seven years in one case and after two years in other cases. Therefore, on the ground of delay, the reference cannot be made by the second Respondent. In the appointment orders as well as in the Standing Orders it has been clearly stated that the post is a transferable one. The learned Single Judge has committed an error in holding that the Standing Orders do not contemplate the power of transfer for the Appellant, which is factually incorrect. The learned Single Judge also made reliance upon the judgment of the Hon''ble Supreme Court wrongly in holding that the delay itself cannot be ground to decline the reference. In support of his contention, the Learned Counsel made reliance upon the judgment of the Division Bench rendered in Shaw Wallace Company v. T. Nadu Rept. By C. and S., Labour Dept. and Ors. in W.A. Nos. 225 etc. of 1987, dated 01.12.1987 and the judgment of the Hon''ble Apex Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, and submitted that the appeals will have to be allowed.

4. The submissions of the Learned Counsel for the Respondent No. 1:

The Learned Counsel for the Respondent No. 1 submitted that as found by the learned Single Judge, the second Respondent has gone into the merits of the dispute, but, in law, it is not open to do so. The question as to whether the post is transferable one and the Appellant has got the power of transfer as well as the other issues regarding the transfers cannot be gone into by the second Respondent. The power u/s 10 of Industrial Disputes Act, 1947 is rather limited and in as much as Respondent No. 2 has gone into the merits, the common order of the learned Single Judge does not warrants any interference.

5. In support of his contentions, the Learned Counsel for the Respondent No. 1 relied on the following judgments:

(i) S.C.A.T. and Anr. v. Govt. of T.N. and Anr. 1983 1 LLJ 460 (SC).

(ii) Workmen, Syndicate Bank v. Govt. of India and Anr. in SLP (Civil) No. 8297 of 1982.

(iii) M.P. Irrigation Karamchari Sangh v. State of M.P. and Anr. 1985 1 LLJ 519 (SC).

(iv) Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, .

(v) D.C.K. Sanghv. Union of India and Ors. 1998 III LLJ 792 (SC).

(vi) M. Sudalai Andi and Others Vs. Government of India and Food Corporation of India, .

6. A perusal of the orders impugned passed by the second Respondent would show that they have been passed on the ground that the transfer of a workman is prerogative of the management and therefore, it cannot constitute an industrial dispute, which is in our considered view is a decision on merits, which the second Respondent has no authority or power to do so. The second Respondent has not rejected the reference sought for on the ground that it is stale or made belatedly.

7. It is the Respondent No. 1 in all these appeals, who has challenged the decision of the second Respondent in declining to refer the dispute. It is trite law that an order cannot be improved by assigning reasons which have not been mentioned therein. The only reason by which the reference was declined was on the ground that to transfer a workmen is a prerogative of the management and having accepted the terms and conditions of the appointment order, it is not open to the Respondent No. 1 to challenge the transfer as un-labour activities.

8. Therefore, we are of the considered view that the question of delay as contended by the Learned Counsel for the Appellant has never been a subject matter before the second Respondent. The question as to whether the transfer orders passed by the Appellant is proper or not will have to be decided only by the Industrial Disputes and not by the second Respondent. However, as contended by the Learned Counsel for the Appellant we find considerable force in the submission that the learned Single Judge has committed a factual error in holding that the Standing Orders do not provide any power of transfer. We have perused the Standing Orders produced by the Appellant, which clearly provide for the power of transfer. Be that as it may, these are the matters, which are to be decided only by the Industrial Dispute and not by us while exercising the powers under Article 226 of the Constitution of India.

9. Another important fact in the case on hand is that in pursuant to the order of the learned Single Judge, the second Respondent has in fact referred the dispute to the jurisdictional Industrial Tribunal and the same has also been taken on file. Therefore, taking note of the said subsequent development also, we are of the view that it is just and proper for the parties to adjudicate their rival contentions before the Industrial Tribunal in the dispute, which have been taken on file already. Considering the jurisdiction of the second Respondent in going into the merits of the dispute, it has been held by the Hon''ble Apex Court in Ram Avtar Sharma and Others Vs. State of Haryana and Another, in paragraph 7 as follows:

7. Now, if the Government performs an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima-facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth extraneous and irrelevant reasons nor for justice or industrial peace and harmoney. Every administrative

determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or ground not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. In State of Bombay v. K.P. Krishnan it was held that a writ of mandamus would lie against the Government if the order passed by it u/s 10(1) is based on extraneous, irrelevant and not germane to the determination. In such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. Maybe, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy.

10. Therefore, taking note of the ratio laid down by the Hon''ble Apex Court and in the light of the discussions made above, we do not find any reason to interfere with the order of the learned Single Judge. However, we make it clear that any observations made in these appeals or by the learned Single Judge on merits will not be taken note of by the Industrial Tribunal while dealing with the pending dispute. The finding of the learned Single Judge, holding the Standing Orders do not contemplate the power of transfer for the Appellant is also set aside.

11. In fine, these Writ Appeals are dismissed confirming the order passed by the learned Single Judge, except to the extend indicated above. It is well open to the parties to raise all their contentions before the Industrial Tribunal in the pending disputes. The Industrial Tribunal is directed to consider the issues before it on merits and in accordance with law. No costs. Consequently, connected M. Ps.(MD) No. 1, 1, 1 and 1 of 2010 are dismissed.