SUPREME COURT OF INDIA

Central Bank of India Ltd.

Vs.

K. R. Meenakshisundaram

C.A.No.360 of 1957

(S. J. Imam, S. K. Das and J. L. Kapur, JJ.)

09.12.1958

JUDGEMENT

S. J. IMAM, J.:

1. This is an appeal by special leave against the order of the Chairman, Central Government Industrial Tribunal, Madras hereinafter referred to as the Tribunal, dated the 29th of June, 1956 allowing the respondent's petition of complaint under S. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

2. In our opinion, this appeal must succeed on the ground that the provisions of S. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 did not apply to the facts and circumstances of the case and the Tribunal had no jurisdiction to entertain the above-mentioned petition.

3. The respondent was an employee of the appellant and in the course of his service he was posted at the Karur Branch Office of the appellant and was transferred from that office to the appellants office at Mangalore. The respondent has expressed to the appellant his difficulties in assuming charge of his duties at the appellants office at Mangalore. He, however, went to Mangalore, as directed, and after having worked there for a month applied for leave on the ground of sickness. Leave was granted from time to time until the 7th of June, 1952. Thereafter, he was directed on several occasions by the appellant to join his duties within specified dates. On the 29th of April, 1952 the appellant had written to the respondent that if he did not resume his duty on the expiry of his leave he would be treated as having left the appellants service and his name would be removed from the rolls. The respondent still pleaded that his state of health did not permit him to go to Mangalore and requested that he may be posted to any place in Tamil Nadu or at Madras. The appellants letter dated the 2nd of July, 1952 again stated that the respondent should join his duty at Mangalore within 7 days of receipt of the letter failing which he would be treated as having left the service of the Bank and his name would be removed from the rolls. Further correspondence ensued, the respondent taking the stand that he could not go to Mangalore owing to the state of his health. On the 14th of July, 1952 the appellant again wrote to the respondent that he should resume his duties at Mangalore within a month of the receipt of the letter and that if he still failed to do so, there would be no other alternative left but to treat him as having left its service from the date of his absence. The appellant again, by its letter dated the 5th of August, 1952, informed the respondent that he was being given one more final chance to resume his duties at Mangalore by the 16th of August, 1952 failing which he would be treated as having left its service. The respondent still adopted the attitude that he was unable to proceed to Mangalore due to the difficulty of language, diet and health.

Finally, the appellant, by its letter dated the 26th of August, 1952, informed the respondent that enough latitude had been shown to him in the past and that if he did not resume his duties at the Mangalore office by the 1st of September, 1952 it would consider that the respondent was no more interested in the Bank's service and there would be no other alternative left but to treat him as having left its service. To this the respondent replied by his letter dated the 29th of August, 1952 that his case may be considered dispassionately or he may be permitted to have recourse to proper channels for the redress of his grievances. The appellant did not reply to this letter. On the 6th of October, 1952 the respondent wrote to the Conciliation Officer (Central) representing his grievances and concluded his letter by saying that so far he had not received any reply and that he presumed that his services had been terminated illegally and that the Conciliation Officer may take up his case for enquiry and due consideration. The Conciliation Officer wrote to the appellant expressing his opinion that he had come to a decision that the case of the respondent should be reconsidered in view of the circumstances in which he had acted. To this the appellant replied its inability to reinstate the respondent but would keep his case in view as and when a vacancy occurred at any of its Branches in South India when it may be considered to take him up as a fresh hand. The Concilation Officer communicated to the respondent the attitude of the appellant. Previous to this on the 17th of November, 1952 the appellant had written to the Conciliation Officer concerned to the effect that from the very beginning the respondent had no intention to join the appellant's office at Mangalore and that the appellant could not keep the post open till the respondent chose to resume duty. He had already been warned that his failure to resume duty would amount to his having left the Bank's service. On the 24th of March, 1958 the respondent wrote to the appellant to the effect that he was surprised to find his services were being terminated without proper cause and notice and that he was prepared to resume duty any where in Tamil Nad and that his request that he may be posted in Tamil Nad may be granted. Further that his absence may be considered as leave without pay and the continuity of his service may be maintained. The appellant by its letter dated the 4th of April, 1953 informed the respondent that as the vacancy at its Mangalore office had been filled up after proper warning to the respondent the question of treating his absence as leave without pay or maintaining continuity of his service not arise at all. The respondent wrote to the appellant on the 14th of April, 1953 that he did not consider that he had resigned his post. On the 21st of April, 1953 the appellant wrote to the respondent informing him that the position had been made quite clear in the previous correspondence and that it had nothing to add to what had already been stated therein and that no cognizance would be taken of any further representation by him on the subject. There is no dispute before us that the correspondence between the appellant and the respondent, as stated above, took place.

4. the respondent filed his petition under S. 23 of the Industrial Disputes (Appellate Tribunal) Act on the 4th of May 1958 although the petition is dated the lst of May, 1953. The Sastry Award in the All India Bank Dispute was given on the 20th of April, 1958. The appellant was a party to the proceedings with respect to which the said Award had been made and an appeal was filed before the Labour Appellate Tribunal on the 16th of May, 1953.

5. The appellant in reply to the respondent's petition under S. 23 had objected in its supplementary counter-affidavit that the Tribunal had no jurisdiction under S. 23 to entertain the petition inasmuch as there was neither a contemplated appeal under S. 10 of the Industrial Disputes Appellate Tribunal) Act nor was there any appeal pending under the Act when the events referred to in the affidavit of the respondent' had occurred. The decision of the Tribunal also shows that the question of its jurisdiction to entertain the petition under S. 23 was seriously raised. The Tribunal, however, overruled the objection and it is a matter for consideration whether the Tribunal had rightly overruled the objection.

6. In our opinion, the correspondence referred to above clearly established that after 1-9-52 the respondent was no longer regarded as in the service of the appellant. It had been urged on behalf of the respondent that the appellant in its affidavit in reply to the petition under S. 23 had stated that the respondent himself had abandoned his post and had given up his service in the Bank. Consequently, the appellant cannot now take up the plea that the respondent's services with the appellant, if terminated by it, had been so terminated from the 2nd of September, 1952. It was further argued that the correspondence clearly showed that the respondent had not abandoned his services or resigned his employment with the appellant; therefore, the action of the appellant amounted to refusal to give work to the respondent who was still its employee. The refusal to give work was a continuous process. It amounted to alteration of the conditions of service of the appellant. The termination of the respondents services had not taken place in any event before the 21st of; April, 1953. Therefore, the provisions of Ss. 22 and 23 applied to the facts of the present case and the Tribunal had jurisdiction to entertain the petition.

7. Section 22 states;

"During the period of thirty days allowed for the filing of an appeal under section 10 or during the pendency of any appeal under this Act, no employer shall-

(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or

(b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal,

save with the express permission in writing of the Appellate Tribunal."

8. Section 23 states:

"Where an employer contravenes the provisions of section 22 during the pendency of proceedings before the Appellate Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Appellate Tribunal and on receipt of such complaint, the Appellate Tribunal shall decide the complaint as if it were an appeal pending beore it, in accordance with the provisions of this Act and shall pronounce its decision thereon and the provisions of this Act shall apply accordingly."

It is clear from these provisions that S. 23 can only come into play if the provisions of S. 22 had been contravened. The Sastry Award was given on the 21th of April, 1953 and the appeal to the Labour Appellate Tribunal had been filed on the 16th of May, 1953. The services of the respondent were regarded by the appellant as having ended from the 2nd of September, 1952. If the services of the respondent had been terminated by the appellant they had been terminated before the Sastry Award was made. On the other hand, if the respondent abandoned his service or resigned his post, the termination of his service was not by the appellant in which case the provisions of S. 22 did not apply. Assuming, however, without deciding, that the appellant terminated his services, that termination was not during the 30 days allowed for filing of an appeal under S. 10 or during the pendency of an appeal. It is true that an industrial dispute was pending before the Sastry Tribunal at the time the respondents services ended. The remedy of the respondent then was really under S. 33-A of the Industrial Disputes Act, 1947. The Sastry Tribunal had, however, made its award on the 21th of April, 1953 and thereafter it was functus officio and no such application had been filed under S. 33-A before it gave its award. As the respondents services had not ended during the period

stated in S. 22, it is clear that the provisions of that section did not apply. Since the provisions of S. 22 did not apply the petition filed by the respondent under S. 23 was misconceived and the Tribunal had no jurisdiction to entertain it. We wish to make it quite clear that we do not decide that the services of the respondent had been terminated by the appellant. What we do decide is that from the 2nd of September, 1952 the respondent was no longer in the service of the appellant and that even if it were to be assumed that the termination was by the appellant it was not during the period specified in S. 22.

9. In our opinion the Tribunal erred in holding that the appellant's action amounted to refusal to give work to the respondent and as that refusal continued during the relevant period under S. 22 it had jurisdiction to entertain and consider the petition under S. 23. In our opinion, no such conclusion could be drawn from the correspondence between the appellant and the respondent referred to above. That correspondence clearly showed that if the respondent did not join his duties at Mangalore by the lst of September, 1952, the appellant would not consider the respondent as any longer in its service. The notice given was clear and as the respondent did not resume his duties at Mangalore by the lst of September, 1952, it could be inferred by the appellant that the respondent voluntarily left its service. On the other hand, it may be possible to infer from the contents of the letter of the 26th of August, 1952, by which the respondent was given time until the lst of September, 1952 to join his duties at Mangalore otherwise he would be treated as no longer in its service, that his services were terminated by the appellant if the respondent failed to comply with the directions given therein. Whatever inference may be drawn from that letter, it is quite clear that the respondent was no longer in the service of the appellant from 2nd September, 1952. In any event, the letter of the appellant dated the 23rd of December, 1952 to the Conciliation Officer in reply to his letter of the 9th of December, 1952 clearly showed that the respondent was no longer in the service of the appellant. It would be, therefore, altogetherwrong to suppose that this was a case where an employer had continuously refused to give work to his employee.

10. It is unnecessary for us to give any decision on the merits of the case as our decision is that the Tribunal had no jurisdiction to entertain the complaint under S. 23

11. The appeal is accordingly allowed and the decision of the Tribunal is set aside It had been strongly urged before us that the appellant should be awarded its costs. Normally, a successful appellant should get his costs, but it seems to us that, in the circumstances of the present case, it is unnecessary to award costs to the appellant. The parties will accordingly bear their own costs of this appeal.

Appeal allowed.

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