

Workmen of Shri Rangavilas Motors (P.) Ltd. and Anr

Vs

Shri Rangavilas Motors (P.) Ltd. and Ors

Civil Appeal No. 1065 of 1965

(M. Hidayatullah, C. A. Vaidialingam, S. M. Sikri JJ)

01.02.1967

JUDGMENT

SIKRI, J. –

This appeal by special leave is directed against the judgment of the Mysore High Court in Writ Petition No. 1096 of 1961 by which the High Court allowed the Writ Petition and quashed the impugned award dated June 30, 1961, made by the Labour Court, Bangalore, in Reference No. 51 of 1960. In order to appreciate the points raised before us it is necessary to give the relevant facts.

The second appellant before us, R. Mahalingam, was engaged as a Foreman in the workshop of Sri Rangavilas Motors (P.) Ltd., the first respondent, hereinafter referred to as the Company, in the month of April, 1956. By an order dated January 21, 1960, Mahalingam was transferred from Bangalore to Krishnagiri where the head office of the Company is situated. Mahalingam entered into correspondence with the Company alleging that according to the conditions of his employment he could not be transferred from Bangalore to Krishnagiri. Ultimately, the Company framed charges against Mahalingam and removed him from service by an order dated April 7, 1960. On April 8, 1960, Mahalingam complained in writing to the Assistant Commissioner of Labour who was functioning as the conciliation Officer at Bangalore. Later on, one Selvaraj took part in the conciliation proceedings on the authority of the resolution dated July 21, 1960, passed at the General Body meeting of Krishnagiri Motor Workers' Union, among whose members 112 out of 170 were employees of the Company. Selvaraj filed a statement of claims before the Conciliation Officer on September 1, 1960. The Conciliation Officer reported to the Government that the conciliation proceedings had failed, and thereupon the State Government by its order dated November 1, 1960, made in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947) - hereinafter referred to as the Act - referred for adjudication by the Labour Court, Bangalore, the following points in dispute :-

"1. Whether the order of the management of Sri Rangavilas Motor (Private) Ltd., in transferring the workman Sri R. Mahalingam, Foreman, from their branch at Fort, Bangalore, to Krishnagiri, is illegal or unjustified. If so, is the workman entitled to reinstatement in Bangalore Branch with benefits of back wages or to any other relief ?

2. Is Sri R. Mahalingam, Foreman, entitled to arrears of increments and overtime wages, if so, what is the amount he is entitled to ?

Selvaraj, inter alia, prayed in his statement of claims, filed on behalf of Mahalingam,

as follows :-

".... it is prayed that the Hon'ble Court may be pleased to direct the second party (the Company) to cause the payment of overtime wages due, increments due (as mentioned in the annexure to this statement) as also the arrears of wages from 1-2-60 to 15-3-1960 and order payment of back wages with effect from the date of termination of service by setting aside the said order of termination and to reinstate the workman with continuity of service."

The Company, in reply, contended that the reference was limited only to the question of transfer, and hence no question of reinstatement or back wages could be adjudicated upon. Further, the Company contended that the reference was bad because it did not fall under any of the items enumerated in the Second Schedule to the Act. It was also contended that the dispute was an individual dispute. One further objection was raised to the effect that the reference should have been made to the National Tribunal and not to the Labour Court.

The Labour Court overruled all the objections regarding jurisdictions raised by the Company and made the award holding that both the transfer as well as the removal from service of Mahalingam were illegal and that he was entitled to overtime wages as well as increments. The Labour Court made the following further direction :-

"The workman Sri Mahalingam should be reinstated in Bangalore branch with full back wages in continuity of the past service and with same emoluments. The second party should also pay the arrears of Rs. 4629/27 towards the overtime wages and as well as the increments due Rs. 384". (sic.)

As stated above, the Company filed a writ petition challenging the award. The High Court formulated the points which arose out of the arguments addressed before it thus :-

- "1. Whether the dispute referred by the State Government to the Labour Court is an industrial dispute ?
2. If it is such a dispute -
 - (a) Whether the State Government of Mysore was not the appropriate Government to make the reference ? and
 - (b) Whether the reference should have been made by the Central Government to a National Tribunal ?
3. Whether any dispute relating to the termination of the service of the fourth respondent is included in the order of reference ?
4. Whether the points of dispute actually referred fall within the scope of the items enumerated in the second Schedule of the Industrial Disputes Act and are therefore within the competence of the Labour Court ?
5. Whether on the question of transfer there was any dispute at all for adjudication ?"

On the first point the High Court, agreeing with the Labour Court, held that on the facts what was

originally an individual grievance of Mahalingam did assume at the time the reference was made by the Government the character of an industrial dispute.

On the first part of the second point, the High Court held that the State Government of Mysore was the appropriate Government to make the reference. On the second part it held that it was for the Central Government to decide to refer or not to refer the dispute but the State Government which is the appropriate Government in relation to the dispute does not lose its power of making a reference.

On the third point the High Court held that the question of legality or otherwise of the Company's action in removing Mahalingam from service was not the subject-matter of reference to the Labour Court and its award to the extent it dealt with that topic was without jurisdiction.

On the fourth point, the High Court held that the first proviso to clause (d) to section 10(1) of the Act did not apply and that the dispute relating to increments and overtime wages was beyond the jurisdiction of the Labour Court and could not have been validly referred to it. It also held that the dispute regarding transfer was included in the expression "rules of discipline" enumerated as item 8 of the Third Schedule and was therefore not within the competence of the Labour Court to adjudicate upon.

In view of these findings the Award was quashed. Regarding point No. 5 formulated by it, the High Court observed that it was unnecessary to examine that point, but as the matter had been argued at some length, the High Court stated its opinion thereon. In its opinion, there was no scope for making the order of transfer the subject-matter of any dispute.

The same points that were formulated by the High Court were argued before us. Mr. Ramamurti, appearing on behalf of the appellants, urged regarding point No. 3 that on its true interpretation the order of reference was quite clear and that the question of termination of services of Mahalingam was included in the order of reference. We have already reproduced the order of reference and, in our opinion, there is force in what Mr. Ramamurti urges. It seems to us that the order of reference is quite clear if regard is had to the words "reinstatement in Bangalore branch with benefits of back wages." If the words "with benefits of back wages" are not considered, and with respect, the High Court did not consider them, the High Court's conclusion might possibly be justified. It seems to us that by the time the reference came to be made everybody knew that Mahalingam had been removed from service. The words "with benefits of back wages" coupled with the word "re-instatement" are appropriate only to a case of removal and not to a case of transfer. On the facts of this case it is quite clear that the contention of Mahalingam was that the transfer was illegal and if the transfer was illegal, his removal from service would fall automatically with the finding that the transfer was illegal, and one of the appropriate reliefs that would be given would be re-instatement in the Bangalore Branch with benefits of back wages. In our view it is because of the above considerations that the word "removal" was not expressly mentioned. In this connection the High Court relied on the provisions of section 10(4) of the Act which reads as under :-

"10(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

We are unable to appreciate how this sub-section has any relevance to the question of construction

of the order of reference made by the Government. It is true that the points in dispute must be specified, but the point with which we are concerned is, whether as a matter of construction the point in dispute has been specified or not, and according to us the dispute regarding removal has been specified.

Regarding the fourth point, with respect, the High Court misinterpreted the first proviso to clause (d) to section 10(1). This proviso reads as follows :-

"Provided that where the dispute relates to any matter 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);"

The High Court negative the plea of Mahalingam on two grounds : First that there is nothing either in the order of reference or in any other material placed before it to indicate that the Government have applied their mind to the applicability of the proviso to the facts of this case or have actually acted pursuant to the proviso in making the references to the Labour Court and secondly, that there can be no doubt that more than one hundred persons are interested in and are therefore likely to be affected by the dispute in question. In our view it is not necessary that the order of reference should expressly state that it is because of the proviso that a reference is being made to the Labour Court, and if the reference can be justified on the facts, there is nothing in the Act which makes such a reference invalid. The second reason given by the High Court, with respect is erroneous because it seems to have equated the words "interested" and "affected". It would be noticed that section 10(1A) uses both the words "interested" or "affected". Section 10(5) also uses both the words "interested" or "affected". It seems to us that there is a difference in the import of the words "interested" or "affected". The Union which sponsors the cause of an individual workman is interested in the dispute but the workmen who are the members of the Union are not necessarily affected by the dispute. The dispute in this case was regarding the validity of the transfer and consequent removal of the appellant. The other workmen would naturally be interested in the dispute but they are not affected by this dispute. In our opinion, the High Court erred in holding that the first proviso to section 10(1)(d) did not apply to the facts of this case. In view of our decision on this point, it is not necessary to go into the question whether the points in dispute fell within the second or the third Schedule to the Act.

Therefore, the appeal must succeed unless the Company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. Mr. O. P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is : where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in *Indian Cable Co. Ltd. v. Its Workmen* ([1962] Supp. 3 S.C.R. 589 : [1962] 1 L.L.J.

409) held as follows :

"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in Lalbhai Tricumlal Mills Ltd. v. Vin and Others [1956] 1 L.L.J. 557, 558 :

'But what we are concerned with to decide is : where did the dispute substantially arise ? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the labour court. But applying the well-known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction.'

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under section 10 of the Act".

Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government.

Mr. Malhotra further urges that the High Court erred in holding that it was an industrial dispute. We see no force in this contention. The High Court rightly observed that once the findings of fact recorded by the Labour Court are accepted, there is no doubt in law that in the circumstances of this case, what was originally an individual grievance of Mahalingam did assume, at the time the reference was made by the Government, the character of an industrial dispute.

Mr. Malhotra urges that the finding of the Labour Court that the transfer was illegal was perverse. It is not necessary to go into this question because once it is held that there is an agreement between the Company and Mahalingam that he could not be transferred from Bangalore, the transfer would be bad. The Labour Court had observed that one of the terms of agreement was that the Company had agreed not to transfer Mahalingam to any place out of Bangalore for a period of ten years; the Company had transferred Mahalingam from Bangalore to the head office at Krishnagiri and this action of the Company was in contravention of the terms of the agreement.

Then Mr. Malhotra tried to urge the fifth point formulated by the High Court. This point was not taken before the Labour Court and we did not allow him to raise this point.

In the result the appeal is allowed, judgment of the High Court set aside and the Award of the Labour Court restored. The appellant will have his costs here and in the High Court.

Appeal allowed.

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