

G. S. Dhara Singh

Vs

E. K. Thomas and Others

Special Leave Petition (Civil) No. 7586 of 1988

(M. N. Venkataramiah JJ)

09.08.1988

ORDER

VENKATARAMIAH, J. –

1. The question involved in this petition is whether a member of a trade union is entitled to ask for an account and to claim refund of the sums received by the trade union from the management for and on his behalf on his ceasing to be a member of the said trade union.

2. Respondents 1 and 2, E. K. Thomas and K. K. Surendran respectively, were employees of a certain management which was the member of the Cochin Railway Forwarding Agents Association whose President is impleaded as respondent 4 in this petition. The management concerned was doing the business of a clearing agent in the Cochin Harbour Terminus Railways Goods Shed. The respondents 1 and 2 were working as head load workers. Some of the employees working under the management concerned were members of a trade union called Cochin Port Thozhilali Union (hereinafter referred to as 'the trade union') whose General Secretary is impleaded as respondent 3 in this petition. The petitioner, G. S. Dhara Singh was the President of the trade union. The terms and conditions of service including the rates of wages and other called through mutual negotiations between the trade union and respondent 4. Under an agreement entered into in October 1973 an amount equivalent to 10 paise out of every rupee earned by the workers was deducted by the management towards the gratuity fund and transferred to the trade union for and on behalf of the workers. Under another agreement a sum equivalent to 10 paise per rupee in the wages of the workers was paid by the management to the trade union towards accident benefit fund of which the workers were the beneficiaries. The amounts so collected were entrusted to the petitioner, who was also the treasurer and custodian of the funds of the trade union. It is alleged that the petitioner deposited the amounts so received by him in his personal name in his bank account. No account of the amounts so received by him was rendered and the members of the trade union found that it was not possible to keep control over the fund so received by the petitioner. The petitioner who was the President of the trade union did not call any general body meeting and thus the members of the trade union could not ventilate their grievance regarding the mismanagement of the funds received by the petitioner by democratic means. In view of the above difficulty faced by them 85 workers including respondents 1 and 2 and three others, namely, K. T. Raghavan, A. N. Joseph and K. J. Anthappan, resigned from the trade union on January 13, 1976 and formed a separate union of their own, which was registered under the Trade Unions Act. Thereafter respondents 1 and 2, K. T. Raghavan, A. N. Joseph and K. J. Anthappan instituted five suits being Original Suit Nos. 49 to 52 and 54 of 1977 on the file of the Munsiff, Cochin against the petitioner and respondent 3 praying for a decree directing the petitioner and respondent 3 to render an account of the amounts collected on their behalf from December 1969 towards the gratuity at the rate of 10 paise per rupee under each head and to pay the

amounts due to them. Each of the plaintiffs in the said suits estimated the amount payable to him at Rs. 3000. They also claimed future interest at 6 per cent per annum on the amounts found to be due to them till the date of payment.

3. The petitioner, who was the President and Treasurer of the trade union took up various pleas denying his liability to render accounts and to refund the amount. One of the pleas raised by the petitioner was that since the plaintiffs had resigned and ceased to be the members of the trade union they had no right to claim the refund of the sums due to them from out of the funds of the trade union and that if they rejoined the trade union they would be entitled for payment of gratuity and accident benefit when occasion arose for payment of the same. He also pleaded that the suits were not maintainable in civil courts in view of the provisions of the Payment of Gratuity Act, 1972 and the Workmen's Compensation Act, 1923. On the basis of the pleas raised by the parties, the trial court framed two issues, in each of the suits namely, (i) whether the plaintiff could ask the petitioners and respondent 3 to render an account of the amounts received by them and (ii) whether he was entitled to claim the refund of any amount. All the five suits were tried together and they were disposed of by a common judgment dated May 31, 1979 by the learned Munsiff. By his judgment the Munsiff passed a preliminary decree against the petitioner and respondent 3 directing them to render an account of the amounts received by them towards the accident benefit fund from December 1969 to November 16, 1975 and towards gratuity from October 1973 to November 16, 1975. The learned Munsiff further directed that each of the plaintiffs was entitled to get proportionate share of the amount due to him from out of the total amount received by the petitioner and respondent 3. He further directed the plaintiffs to apply for a final decree for ascertaining the actual amount due to them in accordance with the preliminary decree passed by him along with future interest at 6 per cent per annum from the date of suit till date of realization. Aggrieved by the judgment and decrees passed by the learned Munsiff the petitioner filed two appeals in A. S. 122 of 1979 and A. S. 124 of 1979 on the file of the Additional Sub-Judge, Cochin against the decrees passed by the Munsiff in favour of respondents 1 and 2 respectively. After hearing the parties the learned Sub-Judge found that the petitioner and respondent 3 had received from the management amounts on behalf of the workmen concerned towards gratuity and accident benefit fund but the plaintiffs were not entitled to the decree at the hands of the civil court since the suits were not maintainable in view of the provisions of the Payment of Gratuity Act, 1972 and the Workmen's Compensation Act, 1923 which provided for separate remedies. He accordingly set aside the decrees passed in favour of respondents 1 and 2 in the suits filed by them. Aggrieved by the common judgment dated August 21, 1980 of the learned Additional Sub-Judge respondents 1 and 2 filed Second Appeal No. 527 of 1981-F and Second Appeal No. 535 of 1981-G respectively on the file of the High Court of Kerala. The two second appeals were heard together and the High Court by its common judgment dated October 22, 1987 set aside the judgment and decrees passed by the first appellate court and restored the judgment and decrees passed by the trial court. This special leave petition is filed by the petitioner against the said common judgment of the High Court under Article 136 of the Constitution of India.

4. At the hearing of the special leave petition the learned counsel for the petitioner stated and we think rightly that the ground on which the first appellate court had set aside the decrees passed by the trial court, namely, that the suits were barred under the provisions of the Payment of Gratuity Act, 1972 and the Workmen's Compensation Act, 1923 was unsustainable. But he, however, contended that since the amounts had been realised by the petitioner and respondents 3 from the management under settlement which had been entered into through the trade union respondents 1 and 2 could not claim the amount after resigning from the membership of the trade union as the said amounts formed part of the general fund of the trade union to which a member who had resigned

had no right. The learned counsel further urged that since the amounts were made available to the trade union by the employer for the benefits of the members of the trade union on the happening of certain contingencies and since the contingency a member of a trade union who had resigned from the membership of the trade union could not claim the amount. He further urged that only on the dissolution of the trade union its funds could be distributed as per the rules of the trade union and where the rules did not provide for the same then the fund was liable to be distributed as per Rule 11 (1) of the Central Trade Union Regulations, 1938.

5. We do not find that the petitioner is right in his contentions. Admittedly, the amounts were received by the trade union from the employer concerned towards the gratuity and accident benefit to which the workers were entitled. There was no scheme drawn up by the trade union regarding the payment of the gratuity amount and the accident benefit fund received on behalf of the workmen to the workmen concerned. There was no agreement between the trade union and its members that the amount received towards gratuity and accident benefit for and on behalf of the members is liable to be refunded to the workmen concerned. In the instant case the amount which had been received on behalf of respondents 1 and 2 by the petitioner and respondent 3 had, therefore, to be refunded to them on their resignation from the membership of the trade union. We do not find any tenable defence which the trade union could put forward in the circumstances of the case.

6. On the question that the workmen concerned were entitled to the amounts received on their behalf there is a concurrent finding of all the three courts in favour of the plaintiffs. The decisions in *Balmer Lawrie Workers' Union v. Balmer Lawrie and Co. Ltd.* is of no assistance to the petitioner. In that case this Court was concerned with the validity of Clause 17 of the Settlement, referred to therein, which read as follows :

Arrears will be paid within two months from the date of signing of the Settlement. Further, the Company shall collect from each workman an amount equivalent to 15 per cent of the gross arrears payable to each employee under this settlement as contribution to the Union Fund and this amount shall be paid to the Union within 3 days of the payment of arrears by Payee's A/c Cheque.

7. The appellant in the above case which was a non-recognised union had challenged the validity of Clause 17, referred to above, on the ground that it permitted a compulsory exaction not permitted by the Payment of Wages Act from the arrears payable to the workmen. This Court rejected the said contention since under Clause 17 the amount of 15 per cent of the gross arrears received by the Union was to be treated as contribution to the Union Fund and that the said clause was a valid one.

8. In the case before us the petitioner and respondent 3 have not shown that there was any such settlement between the management and the trade union or a scheme prepared by the trade union which was binding on the workmen under which the amounts received towards the gratuity and the accident benefit fund on behalf of the workmen would become a part of the union fund.

9. We do not, therefore, find any ground to interfere with the judgment of the High Court. This special leave petition, therefore, fails and it is dismissed.

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