

# ANDHRA PRADESH HIGH COURT

G. Gurumurthy

Vs.

K. Ramulu

Writ Petn. No. 669 of 1955

(Satyanarayana Raju, J.)

06.08.1957

## JUDGMENT

### **Satyanarayana Raju, J.**

1. This is an application under Article 226 of the Constitution for the issue of a Writ of certiorari to quash the order of the Industrial Tribunal, dated 24-11-1954 in Industrial Dispute No. 11 of 1954, and also the order of reference made in G. O Ms No. 1140 (Development) dated 29-6-1954.

2. On 29-6-1954, in G. O. Ms. No. 1140, the Government of Andhra, in exercise of the powers conferred by Section 10 (1) (c) of the Industrial Disputes Act of 1947 referred to the Industrial Tribunal, Visakhapatnam, the following issue for decision:

"Whether the termination of the services of Sri K. Ramulu, Driver, with effect from 15-1-1953 is justified; if not, to what reliefs is he entitled?"

The Salur Motor and General Workers' Union and the petitioners were mentioned as the parties to the dispute. Notices were duly issued on the parties and they filed written statements containing their respective contentions. In its award, dated 24-11-1954. the Industrial Tribunal, Visakhapatnam, held that the dismissal of Ramulu (1st respondent) was unjustified and that he should be reinstated with effect from the date of dismissal. The Tribunal also held that the 1st respondent was entitled to back wages from the date of dismissal upto the date of reinstatement, excluding the five months' wages which the management admittedly paid to him. Against the said award, the petitioners preferred an appeal to the Labour Appellate Tribunal of India at Madras : By their order dated 26-9-1955, the Labour Appellate Tribunal affirmed the finding of the Industrial Tribunal and dismissed the appeal. The above writ petition was filed in this court on 3-11-1955 for the reliefs mentioned above.

3. On behalf of the petitioners it is contended (1) that there is a valid order passed by the Government of Madras on the 13-8-1953 declining to refer the dispute for adjudicationz and that the said order is conclusive and binding on the successor Government and that the reference

made by the Government of Andhra is illegal inasmuch as the procedure indicated in Section 12 (5) was not followed before the reference was made; (2) that the reference made by the Government of Andhra is without jurisdiction inasmuch as the dismissal of a single worker does not constitute an industrial dispute; and (3) that the award directing the reinstatement of the 1st respondent is bad on the merits.

4. In order to appreciate the above contentions, it is necessary to mention briefly the facts preceding the reference. The Parameswari Bus Service was a partnership consisting of the petitioners and others and it was owning several buses of which MDV 1030 is one. The firm was dissolved in or about the beginning of 1952 and the assets of the firm were divided in specie among the partners. The buses MDV 1030 and ORK 346 fell to the share of the petitioners at the said division and they formed themselves into a new partnership. In or about September 1952, there was a general strike by several bus employees for bonus and wages in which the 1st respondent, who was employed as a driver of the bus MDV 1030, took a leading part. That strike terminated by 3-10-1952 after the management granted certain concessions to the employees. On 6-10-1952 the petitioners directed the 1st respondent to do the additional duty of picking up passengers arriving by the night trains. On 11-12-1952, the 1st respondent was transferred to drive the bus from Salur to Parvatipur. On 29-12-1952, the 1st respondent was informed by the petitioners that he had disobeyed their earlier order and that if he should not comply with that order within a week, his services would be terminated. The President of the Workers' Union, Salur, addressed a letter on 8-1-1953 to the petitioners explaining the difficulties that the 1st respondent would be put to if he had to shift from Vizianagaram to Salur and requesting the management to reconsider the matter. On 11-1-1953, the petitioners sent a letter terminating the services of the 1st respondent with effect from 15-1-1953.

Along with the 1st respondent, five other bus drivers were also dismissed by the management at about the same time. An attempt at conciliation by the District Labour Officer resulted in a tentative agreement dated 22-2-1953, between the President of the Worker's Union and the petitioners. The terms agreed to are as follows:

- "(1) The owners of MDV 1030 and ORK 346 agree to pay wages to the six dismissed workers till their cases are finally disposed of by an Industrial Tribunal.
- (2) The owners agree to pay the wages as per the Payment of Wages Act.
- (3) The Union agreed to abandon the movement started against the owners from 10-2-1953, with immediate effect.
- (4) The owners are at liberty to run the buses with immediate effect."

5. It appears from the evidence that subsequently the workers, except the 1st respondent, were reinstated in service. On 13-8-1953, the Government of Madras by their Memorandum No. 55487-P-III/53-2 informed the Secretary of the Workers' Union that the "Government do not see any case for adjudication with regard to the reinstatement of the worker Sri K. Ramulu (respondent) and he is requested to advise the worker to accept the payment of six months' wages as compensation in lieu of reinstatement." On 11-9-1953, the Labor Officer intimated the petitioners and the President of the Workers' Union that they should meet him at Bobbin for conciliation. On 18-9-1953, the President of the Union wrote to the petitioners for payment of wages as per the agreement. This was replied to by the petitioners in their letter dated 23-9-1953. By his letter dated 24-9-1953, the President of the Union requested the Government of Madras to

make a reference of the dispute to the Tribunal. On 26-9-1953, the President of the Union wrote to the petitioners to implement the agreement dated 22-2-1953. On 30-5-1954, the President of Union gave notice to the petitioners intimating them that the members of the Salur Motor Transport and General Workers' Union would organize a Satyagraha from the 15-6-1954. On 10-6-1954, the Commissioner of Labor wrote to the President of the Workers' Union that the Assistant Commissioner of Labor would be visiting Vizianagaram on the 28th and he was asked to meet him and represent his grievances. The President of the Workers' Union was requested to desist from organising the Satyagraha and not to precipitate matters. On 29-6-1954, the Government of Andhra made a reference under Section 10 (1) (c) of the Act. In the appendix to the Government order, the issues for decision were set out and the employers and the workers, represented by the Salur Motor Transport and General Workers' Union, were mentioned as the parties to the dispute.

6. Having mentioned the relevant facts, I shall now proceed to consider the contentions raised on behalf of the petitioners. From the narration of the facts made above, it is clear that the order of the Government of Madras was passed on 13-8-1953. The Workers' Union made representations with regard to the dispute to the Government of Madras subsequent to their order dated 13-8-1953, and subsequently the Government of Andhra, after its formation on 1-10-1953. The order of the Government refers to the correspondence subsequent to 13-8-1953, viz., the letters from the Workers' Union dated 24-9-1953 and 30-5-1954 and the letters from the Commissioner of Labour dated 7-12-1953, 13-2-1954 and 14-5-1954. These letters have been exhibited by the Industrial Tribunal. The question then is, Is the order of reference made by the Government under Section 10 (1) (c) of the Act without jurisdiction.

7. It has been argued for the petitioner that the Government of Madras, having declined to make a reference, the Government of Andhra had no jurisdiction to refer the dispute because (1) the order of the Government of Madras is binding on the Government of Andhra which is its successor; and (2) that the procedure indicated in Section 12 (5) has not been followed by the Government of Andhra before they made the reference under Section 10 (1) (c).

8. Dealing with the nature and character of an order of reference under Section 10 (1). their Lordships of the Supreme Court observed in *State of Madras v C P. Sarathy*<sup>2</sup>, thus :

"In making a reference under Section 10 (1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination.

<sup>2</sup>1953-1 Mad LJ 212 : AIR 1953 SC 53

No doubt it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon,

and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters."

9. The order of the Madras Government dated 13-8-1953 was passed on the basis of the material then in their possession. Subsequently there was further correspondence between the President of the Workers' Union and the Labour Officer and also between the Commissioner of Labour and the Government. The Union gave notice of their intention to start Satyagraha. The Government, after a consideration of the subsequent events, came to the conclusion that there was a dispute which must be referred for the decision of the Tribunal and they accordingly made a reference under Section 10 (1) of the Act. The fact that the Government of Madras declined to make a reference does not invalidate the order of reference made by the Government of Andhra. The order passed by the Government of Madras is an administrative order and is neither a judicial nor a quasi-judicial order. It was open to the Government of Andhra to take into account the subsequent happenings and circumstances and in the event of their being satisfied that there was a dispute, to make a reference under Section 10 (1), and that is what the Government of Andhra have done.

10. The further contention that no reference can be made under Section 10 (1) without following the procedure laid down in Section 12 (5) of the Act is unsustainable. Under Section 10 (1) the Government can make a reference if they are of opinion that an industrial dispute exists or is apprehended. The jurisdiction of the Government to make a reference under Section 10 (1) is independent of the procedure laid down in Section 12 (5). As has been pointed out in *Raju's Cafe Coimbatore v. The Industrial Tribunal*<sup>3</sup>, it cannot be said that before the Government could make a reference under Section 10 (1) of the Act, the procedure indicated in Section 12 of the Act should be followed. The Government can, even independent of Section 12, make a reference under Section 19.

11. It is then contended that what was referred to for the decision of the Tribunal was not an "Industrial dispute" at all and therefore the Industrial Tribunal had no jurisdiction to make the award, and in support of this contention reliance has been placed upon a decision of the Supreme Court in *Newspapers Ltd. v. State Industrial Tribunal*<sup>4</sup>. It may be mentioned at the outset that there is no indication either in the order of the Industrial Tribunal or in that of the Labour Appellate Tribunal that this contention was raised before them. Counsel for the petitioners, however, argued that this ground of objection was raised in the statement filed by the petitioners before the

Industrial Tribunal and that it was also mentioned in the grounds of appeal filed

<sup>3</sup>1951-1 Mad LJ 236 : (AIR 1951 Madras 865)

<sup>4</sup>AIR 1957 SC 532

before the Labour Appellate Tribunal. Even if this ground of objection might have been so mentioned, it does not appear that it was pressed before either of the Tribunals. Assuming that it is open to the petitioners to raise this ground of objection in this Writ petition, it may be mentioned that from a consideration of the facts stated above, it was the Workers Union that had throughout espoused the case of the 1st respondent. The agreement dated 22-2-1953 was between the Union and the petitioners. Thereafter the President of the Workers' Union was complaining that the petitioners had not implemented the terms of the agreement arrived at

between them. The subsequent agitation was by the Workers' Union and the reference made under Section 10 (1) mentions the Workers' Union and the petitioners as parties to the dispute. The contention of the petitioners that the dismissal of a single worker cannot constitute an industrial dispute, cannot, therefore, be accepted. The case of an individual workman, if espoused by the Workers' Union, constitutes an industrial dispute.

12. The third ground urged on behalf of the petitioners is that the conclusion reached by both the tribunals, that the dismissal of the 1st respondent by the petitioners is unjustified, is erroneous. It cannot be disputed that the question as to whether the dismissal of the 1st respondent is justified or not, is essentially one of fact. On a consideration of the facts, both the Tribunals have concurrently held that the order of dismissal of the 1st respondent is an act of victimisation and that he is entitled to be reinstated in service with back wages. I do not find any error in this conclusion which justifies the interference of this Court under Article 229.

13. For the above reasons, the petitioners are not entitled to invoke the jurisdiction of this Court under Article 226. This Writ petition, therefore, fails and is dismissed with costs. Advocate's fee Rs. 100/-.

Petition dismissed.