MYSORE HIGH COURT

T.A. Shah

Vs

State of Mysore

Writ Petn. No. 1037 of 1960

(A.R. Somnath Iyer and B.M. Kalagate, JJ.)

14.08.1962

JUDGMENT

A.R. Somnath Iyer, J.

1. In this application which involves the interpretation of Section 33 (5) of the Industrial Disputes Act, the petitioner who was an employee of a concern called The Indian Tin Industries, Private Limited, and who was dismissed on 17-9-1958 for misconduct during the pendency of proceedings relating to an industrial dispute before a Labour Court, questions the correctness of an order made by the Labour Court striking off an application presented by the Company under the proviso to Section 33 (2) (b) of the Act for approval of the dismissal of the petitioner.

2. In the proceedings before the Labour Court touching the industrial dispute, an Award was made by it which was published in the official gazette either on November 25, 1958, or on the 26th or 27th of that month. Before this Award was published, the petitioner had been dismissed by the Company on September 17, 1958, after the holding of an enquiry into an act of misconduct with which he was charged. On September 18, 1958, the Company made an application to the Labour Court seeking approval of the action taken by it. Although this application was pending before the Labour Court for at least two months and eight days before the Award was published and the Award became enforceable under the provisions of Section 17-A after the expiry of thirty days from the date of the publication, the Labour Court very surprisingly made no order on that application. When, however, the Company asked the Labour Court to strike off its application on the ground that it had become functus officio, it acceded to that request. It. is this order made by the Labour Court which is challenged by the petitioner on the ground that an application properly presented by the Company during the pendency of the proceedings relating to the Industrial Dispute, could not have been struck off by the Labour Court but should have been decided in obedience to the requirement of Section 33 (5) of the Act.

3. The Labour Court thought that such adjudication was no longer possible since no adjudication upon an application under the proviso to Section 33 (2) (b) was possible after the proceedings before the Labour Court relating to the industrial dispute had terminated. This view which the Labour Court reached rested on the provisions of Sections I7-A, 20 (3), the proviso to Section 33 (2) (b) and Section 33 (5) of the Act.

4. Section 20 (3) specifies the date of the commencement of a proceeding before a Labour Court and the date on which that proceeding terminates. It states that that proceeding shall be deemed to have commenced on the date of the reference and shall he deemed to have concluded on the date on which the award becomes enforceable under Section 17-A. That sub-section reads :

> "20. * * *
> (3) Proceedings before an arbitrator under Section 10-A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication as the case may be, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 17-A."

Section 17-A to which Section 20 (3) refers, provides that an award becomes enforceable on the expiry of thirty days from the date of its publication under Section 17.

5. It is clear from these two provisions that 3, proceeding before a Labour Court which commences on the date of the reference to it, terminates after the expiry of thirty days from the date on which its award is published under Section 17.

6. Now, that period of thirty days in this case had long expired before the Labour Court made the impugned order by which it struck off the application presented by the Company, which means that when the Labour Court made the impugned order, there was no proceeding pending before it relating to the industrial dispute in connection with which there was a reference to it under Section 10. The short point which this case presents is whether the termination of the proceedings relating to the industrial dispute brought about a deprivation of the jurisdiction of the Labour Court to make an order on the application presented under the proviso to Section 33 (2) (b) according or refusing the approval sought.

7. The power to accord or refuse approval to the action taken by the employer is what is conferred by Section 33 of the Act. Sub-section (1) of that section forbids the dismissal or alteration of a condition of service of an employee in regard to a matter connected with the dispute except with the express permission in writing of the authority before which a proceeding is pending before any of the authorities specified in that sub-section. Sub-section (2) however empowers an alteration of a condition of service which has no connection with the dispute and the dismissal of a workman for misconduct unrelated to the dispute, subject to the condition that

the dismissal or discharge is preceded by the presentation of an application by the employer to the authority before which such proceeding is pending seeking approval for such dismissal or discharge. It is not in my opinion, necessary to decide the correctness of the submission made on behalf of the Company in this case that such discharge or dismissal is possible even before the presentation of an application for approval. It is enough to point out that what the proviso states is that no discharge or dismissal shall be made unless an application has been made by the employer for approval. What exactly is the interpretation to be placed on the proviso in regard to the sequence in which the discharge or dismissal and the presentation of the application is permitted is not a matter which arises for decision in this case.

8. Sub-section (3) of Section 33 forbids the alteration of a condition of service of a workman or his discharge or dismissal not only in cases in which such alteration or dismissal has some connection with the dispute but also in other cases if the workman is a protected workman without the express permission in writing of the authority before which the proceeding is pending.

9. Then, sub-section (5) on which Mr. Ramachar appearing on behalf of the petitioner very strongly depends reads :

> "33. * * *
> (5) Where an employer makes an application to a conciliation officer, Board, Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit."

10. This case is one to which the provisions of sub-section (2) were applicable since the misconduct with which the petitioner was charged was unconnected with the dispute in regard to which a reference was pending before the Labour Court with the result that it was possible for the Company to seek the approval of the Labour Court before which the industrial dispute was pending for the order of dismissal which it had made in the enquiry which it conducted. It was likewise possible for the Labour Court before its award became enforceable under Section 17-A to make an order according its approval or refusing it. But the question which is presented by this case is whether even after the award became enforceable under Section 17-A, the jurisdiction to adjudicate upon the application made by the Company for approval continued to exist. That question arises by reason of the fact that on the date on which the award became enforceable under the provisions of Section 17-A, namely, after the expiry of thirty days from the date of its publication under Section 17, the pending proceeding before the Labour Court touching the industrial dispute came to an end, thus making the Labour Court functus officio with reference to the industrial dispute. Did it also become functus officio with reference to the application presented by the Company for approval of the order or dismissal made by it, is the further

question which is posed before us.

11. It would be possible to take the view that the Labour Court was right in striking off the application presented by the Company before it if it can be held that an application under the proviso to Section 33 (2) (b) lapses with the termination of the proceedings relating to the reference in respect of which the Labour Court made its award. But, if, on the contrary, it could be said that notwithstanding the termination of the main proceedings relating to the industrial dispute, the Labour Court continues to possess jurisdiction to adjudicate upon the subsidiary and ancillary matter relating to the application for approval, it would be easy to hold that the Labour Court was entirely in error in dropping the application at the request of the Company.

12. In support of the criticism made by Mr. Ramachar of the order made by the Labour Court, he asks our attention to the provisions of sub-section (5) of Section 33 which directs the authorities specified in that sub-section to dispose of an application presented under the proviso to sub-section (2) (b) without delay and as expeditiously as possible. Mr. Ramachar points out that there is no reference in this sub-section to the pendency of the main proceeding in which the application is presented under the proviso to Section 33 (2) (b), and therefore, asks us to take the view that since sub-section (5) is what confers jurisdiction and power on the authority to make an order on that application, no limitations should be placed upon that power not expressly stated in that sub-section.

13. The essential weakness of this argument is that although sub-section (5) of Section 33 does not in terms refer to any pending proceeding, such reference to a pending proceeding is plainly implicit in the provisions of that sub-section which directs the 'authority concerned' to dispose of an application presented under the proviso to sub-section (2) (b) of Section 33 in manner specified. The question is, which is the 'authority concerned' referred to in that sub-section. In order to identify the 'authority concerned' referred to in the sub-section, one must necessarily look into the provisions of sub-section (2), the opening words of which are 'During the pendency of any such proceeding in respect of an industrial dispute.' What is of greater importance is that the approval required by the proviso to Section 33 (2) (b) is the approval of 'the authority before which the proceeding is pending'. It is manifest although there is no reference in sub-section (5) to the authority before which a proceeding is pending, that the 'authority concerned' referred to in sub-section (5) is no other than the 'authority before which the proceeding is pending' and the 'proceeding' referred to in this expression is again no other than the proceeding 'in respect of an industrial dispute' referred to in the opening portion of sub-section (2). What is therefore incontrovertible is that the only authority which may make an order under sub-section (5) is the authority before which a proceeding in respect of which an industrial dispute is pending. It is the approval of that authority which is relevant for the purpose of the proviso to Section 33 (2) (b) which, if accorded, gives recognition to the action taken by the employer, and, which, if refused, destroys it.

14. If no proceeding is pending before the authority when it takes up the application for approval or disposal, it is no longer an authority before which a proceeding in respect of an industrial dispute is pending, which is the only authority which can make an order under sub-section (5). Mr. Ramachar asked us to take the view that the pendency of a proceeding in respect of an industrial dispute is not a condition precedent for the exercise of power under sub-section (5). It seems to me that that view which was pressed upon us clearly overlooks the plain language and theory of Section 33, particularly, of the proviso to sub-section (2) (b) and of sub-section (5). It is abundantly clear from the provisions of Section 33 that what is ensured by that section is the continuance of the conditions of service and employment of an employee during the pendency of the proceedings referred to in that section, so that no unfair labour practice or victimisation may be possible by an employer by way of reprisal against his employee. That vigilance which has to be exercised by the concerned authority during the pendency of a proceeding before it, it is plain, becomes quite unnecessary and purposeless the moment the proceedings during the pendency of which there should be no change either in the condition of service or in the continuance of employment except either with the express permission in writing or by approval, come to an end. It would, in my opinion, be far too unreasonable for anyone to suggest that if the main proceeding during which it would be the duty of the authority to prevent any action on the part of the employer by way of reprisal, has itself come to an end by reason of the award made by it in that proceeding acquiring efficacy and potency after the expiry of thirty days after its publication, the authority which made that aware and the proceedings before which have come to an end should nevertheless be invested with the power to adjudicate upon a subsidiary and ancillary matter such as an application for approval of a dismissal or discharge. On the contrary, the provisions of sub-section (5) which direct the concerned authority to deal with an application expeditiously and without delay do afford an unmistakable indication that such expeditious disposal is directed for the plain reason that the adjudication on the application becomes impossible the moment the industrial dispute itself came to an end. It is, in my opinion, obvious that there is some similarity between an application presented under the proviso to sub-section (2) (b) of Section 33 and an interlocutory application presented in a pending suit. If an interlocutory application presented in a pending suit must be disposed of before the suit ends in a decree, and, if except in cases where a suit is deemed to be continuing such as in a case where the decree is only a preliminary decree, it is plainly Impossible for the Court to deal with an application if it had decided the suit, it seems to me that we should take the same view of an application presented under the proviso to Section 33 (2) (b) which has no higher status than that of an interlocutory application made in a civil suit. That being so, the jurisdiction to adjudicate upon that application would be available only so long as the main proceeding in which that application was presented still remains to be disposed of.

15. That view which, in my opinion, we should take is reinforced by the provisions of Section 33-A of the Act which directs that a complaint against a contravention of the provisions of Section 33 should be adjudicated upon as if it were a dispute referred to or pending before the authority referred to in it. The contrast between section 33-A and sub-section (5) of Section 33 is

so manifest that it does not enable Mr. Ramachar to present the argument that an application presented under the proviso to sub-section (2) (b) of Section 33 is some kind of an independent dispute upon which an adjudication is possible even after the disposal of the industrial dispute during the pendency of which that application was presented.

16. This view that I am disposed to take does not inject into sub-section (5) any factor which it does not already contain, as contended by Mr. Ramachar. Nor am I disposed to agree with the submission made by Mr. Ramachar that the view that an adjudication upon an application for approval is possible only during the pendency of a proceeding connected with an industrial dispute, extracts from sub-section (5) any portion of its vitality. It is no doubt true that an unscrupulous employer may, by presenting an application for approval on the eve of the expiry of the period of thirty days referred to in Section 17-A, make it impossible for the authority concerned to adjudicate upon it and thereby circumvent the provisions of the proviso to Section 33 (2) (b). But the fact that such circumvention is possible cannot persuade us to place an interpretation on the relevant statutory provisions which their plain language does not admit.

17. In my opinion, an application for approval under the proviso to Section 33 (2) (b) must be adjudicated upon only during the period between the date of the reference and the date on which the period of thirty days expires from the date of the publication of the award under Section 17. If no such adjudication is made by the authority during that period, it will not have the competence to make that adjudication thereafter.

18. The Labour Court, in my opinion, was therefore right in striking off the application presented by the Company.

19. Mr. Ramachar, at one stage, complained that in directing the application to be struck off, the Labour Court made an inappropriate and improper order. It seems to me that this complaint becomes academic if, when the application was struck off by the Labour Court, it did not possess the competence to adjudicate upon it. If it did not have the jurisdiction to deal with that application whether it strikes off or whether it says that it could not deal with that application or whether it merely makes a direction that it should be consigned to the record room would make very little difference. In this application, the petitioner seeks a mandamus to the Labour Court that it should make an adjudication upon the application, and, so long as that mandamus cannot be issued, the form of the order by which the Labour Court declined jurisdiction becomes inconsequential.

20. This application should, in my opinion, be dismissed. It is so ordered.

21. But, in the circumstances, there will be no order as to costs.

Kalagate, J.

22. I agree.

Petition dismissed.