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Court : Karnataka

Decided On : Nov-23-1962

Reported in : (1963)IILLJ678Kant; (1963)1MysLJ385

Judge : A. Narayana Pai and ;Nittoor Sreenivasa Rau, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1), 33C(1), 33C(2) and 39

Appeal No. : Writ Petition No. 1128 of 1961

Appellant : Mysore Press (Private) Ltd.

Respondent : State of Mysore and ors.

Judgement :

ORDER

Narayana Pai, J.

1. The respondent 4, K. Puttaswami, was the sub-editor of a Kannada daily called Janavani conducted by the petitioner, Mysore Press (Private), Ltd., Basavangudi, Bangalore-4. He was removed from service on 1 July, 1957. That removal was the subject of an industrial dispute raised by the Mysore Journalists' Association. The State Government, in exercise of their power under S. 10(1)(c) of the [Industrial Disputes Act, 1947](#), referred the dispute to the labour court at Bangalore. The points of dispute so referred were -

(1) Is the management justified in terminating the services of K. Puttaswami, sub-editor, Janavani, from 1 July, 1957 on alleged grounds of retrenchment

(2) Is the Mysore State Journalists' Association justified in demanding that K. Puttaswami be reinstated into his original post, with full compensation for the entire period of involuntary unemployment If not, to what relief, if any, is the affected workman entitled

2. The labour court went into the matter, took evidence tendered by the parties and made an award on 19 March, 1960 which was published in the Mysore Gazette, dated 26 May, 1960. The decision or the conclusions of the Court are set out in Para. 45 of the award which reads as follows :

'Paragraph 45. - Lastly I have to look into the matter of relief, whether the said employee should be ordered to be reinstated with back-wages or not. Regarding reinstatement, I did not find any valid ground to reject it but as far as back-wages the press has alleged that it incurred a heavy loss as has been evident by the profit and loss accounts for the years 1955 and 1956. On the perusal of the profit and loss account for the year 1955 marked as Ex. M. 6 in the debit side it is shown as 'net profit for the year before writing off bad debts and providing for depreciation and doubtful debts' carried over Rs. 77,702-13-9. On the second page of Ex. M. 6 that amount of net profit has been set off against bad debts written off. In the year 1956 ending 31 December, 1956 on the side of the debit it has been shown as 'balance, being profit for the year (without providing for depreciation and doubtful debts) carried down' Rs. 37,782-11-4 and after providing for depreciation and doubtful debts it has been brought into loss. The figures that have been shown in the profit and loss accounts for the years 1955 and 1956 required further scrutiny and on the basis of the figures that have been brought on record Exs. M. 5 and 6, it was hard to find out whether the concern was actually running in loss. The press has earned a considerable amount of profit, but it was set off against providing for depreciation and bad debts. The press has also filed the balance sheets for those two years, but they are not originals and no certificate is attached to them by the chartered accounts. Hence I give up this matter for the determination of the management itself and it is learnt that there is a change in the management and

the general manager has resigned the post. I thought it proper to provide such an opportunity for the board of directors to reconsider and allow the back-wages to which K. Puttaswami is entitled. Thus I conclude both the issues accordingly in favour of the first party.'

3. Apparently acting on the direction of the labour court in the said paragraph the board of directors of the petitioner-company determined that a sum of Rs. 700 would be a reasonable amount to be paid to respondent 4 on account of back-wages. Respondent 4 did not accept the figure as reasonable and approached the Commissioner of Labour in Mysore (respondent 2) with a request to take action under S. 33C(1) of the Industrial Disputes Act, to collect from the petitioner and pay him full back-wages which alone, according to the petitioner, was the reasonable thing to do in accordance with the award of the labour court. In the first instance, the Commissioner of Labour appears to have taken the view that the labour court not having directed payment of any ascertained sum of money to respondent 4, it was not possible for him to issue a certificate to the Deputy Commissioner to recover any amount from the petitioner under S. 33C(1) of the Industrial Disputes Act. He therefore addressed a letter to the presiding officer of the Court on 31 December, 1960 to determine the amount to be paid to respondent 4 suggesting that the labour court is the one specified by a notification dated 3 May, 1960 of the State Government, - apparently for purposes of Sub-section (2) of S. 33C of the Industrial Disputes Act. It appears from a letter later addressed by respondent 2 to the petitioner on 7 April, 1961 that the said application to the labour court was withdrawn by respondent 2. In this said letter, respondent 2 stated :

'In the interest of natural justice and in accordance with the award of the labour court, I hold that it is reasonable to pay K. Puttaswami salary for 40 months and 6 days for period between retrenchment and reinstatement without prejudice to his other claims. The back-wages as calculated on the basis of his salary of Rs. 85 per month from the date of retrenchment to the date of reinstatement, i.e., 1 July, 1957 to 7 November, 1960, amounts to Rs. 3,417.'

and called upon the petitioner to pay the said amount of Rs. 3,417 to respondent 4 within eight days of the receipt of the letter threatening action for recovery of the same under S. 33C(1) of the Act.

4. Although the petitioner protested that the proposed action of respondent 2 was without jurisdiction and illegal, respondent 2 issued a certificate under S. 33C(1) to the Deputy Commissioner, pursuant to which action for recovery was commenced by the revenue authorities.

5. Hence this writ petition in which the petitioner prays for the issue of an appropriate writ to quash the certificate for recovery issued by respondent 2 under S. 33C(1) of the Industrial Disputes Act.

6. The said S. 33C(1) reads as follows :

'(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chap. V-A, the workman, may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.'

7. Although the section refers only to the appropriate Government, it is conceded that the said power has been delegated to the Commissioner of Labour under S. 39 of the Act.

8. The argument on behalf of the petitioner is that the power or jurisdiction under S. 33C(1) is merely one in the nature of execution which follows the passing of an order or the making of an award by a competent Court or authority and confers no jurisdiction on the Government or the officer to whom the power of the Government have been delegated to determine the amount due. That jurisdiction to determine the amount, it is contended, vests in this case only in the labour court. The labour court by its award having left the determination of the amount payable to respondent 4 to the management of the petitioner-company itself, and

the company having determined it as Rs. 700, the learned counsel for the petitioner states that is the only amount which could be claimed by the petitioner, and no action for recovery was called for because the petitioner has always been and is even now willing to make payment of that amount. It may be added that as a condition of the stay granted by this Court at the time of admitting this writ petition, a total sum of Rs. 1,700 has actually been paid to respondent 4. The learned counsel for petitioner relies upon a ruling of the Supreme Court in *Kasturi & Sons v. Salivateswaran* [1958 - I L.L.J. 527] and on a decision of the High Court of Madhya Pradesh in *Bengal Nagpur Cotton Mills, Ltd. v. State of Madhya Pradesh* [1960 - II L.L.J. 551].

9. These decisions fully support the contention put forward on behalf of the petitioner.

10. The Supreme Court dealt with a case falling under S. 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, the language employed in which is the same as the language of S. 33C(1) of the Industrial Disputes Act. Their lordships, accepting the contentions on behalf of the petitioner before them, clearly, held that the only enquiry which the State Government or the authority specified by it could hold under S. 17 of that Act was a summary enquiry on a very narrow and limited point, viz., whether the amount which is found due to the employee by a competent authority is still due or any portion thereof has already been paid and if so, how much still remains to be paid. Their further held that the jurisdiction to make a formal enquiry and to determine the amount due to an employee is not that of the Government or the authority specified by it but that of a Court or tribunal invested with the power to make that determination.

11. The principles laid down by the Supreme Court were followed and applied to a case under S. 33C(1) of the Industrial Disputes Act by the Madhya Pradesh High Court in the case cited above. It was argued before the High Court in that case that although the amount due under a settlement or an award would be the amount stated in the settlement or determined by the award, the amount due or payable to an employee under Chap. V-A of the Industrial Disputes Act being

those capable of being calculated according to the provisions of that chapter could be determined by the Government or their delegate under S. 33C(1). The Court rejected that argument and held that though the section provides that the Government is to be satisfied that any money is due to an employee, such satisfaction is not for the purpose of ascertainment of the amount but is only with regard to the question whether any sum ascertained by a competent authority as payable to a worker has or has not been paid to him or whether any balance is still due to him. The Court added that the question of recovery of any amount cannot arise unless it is first ascertained by a competent authority.

12. We respectfully agree with the reasoning in the decision of the Madhya Pradesh High Court which applied the principles stated by the Supreme Court of India to S. 33C(1) of the Act.

13. Now, in the case before us, the labour court has not in clear terms specified the amount which the petitioner should pay to respondent 4 on account of back-wages. According to the petitioner, the determination of the said amount was left entirely to the discretion of the management of the petitioner-company itself. Respondent 4, however, strenuously contends that the labour court obviously did not accept the case of the petitioner that its financial position did not justify payment to the respondent 4 of full back-wages from the date of his removal from service till the date of reinstatement and left the matter to the management only because it was represented to the Court that a new management was about to take charge of the affairs of the company and that the said new management may be expected to pay full back-wages to him. It cannot be disputed that the labour court has the jurisdiction to decide whether in a given case an employee directed to be reinstated should be paid his full back-wages or only a portion thereof or not at all. Whereas the petitioner before us contends that it is implicit in Para. 45 of the labour court's award that the Court entertained an opinion that this was not a fit case for directing payment of full back-wages, respondent 4 urges that the implication of the said paragraph is that the labour court did not accept the petitioner's case for determination of a smaller sum as due to him on account of back-wages and that therefore the Court should be taken to have entertained the view that he should be paid his full back-wages.

14. In our opinion, the very fact that two opposing views as to what the labour court meant have been so strenuously pressed before us indicates that the ultimate direction of the labour court in the matter of payment of back-wages is not capable of any clear ascertainment from its award.

15. It follows, therefore, that there was no specific or ascertained sum determined as payable to respondent 4 under or by the award of the labour court. It has to be held therefore that the Commissioner of Labour, respondent 2 herein, had no jurisdiction or power to issue the impugned certificate for recovery of a sum determined by himself as due to respondent 4.

16. Merely to quash the certificate, however, would meet the ends of justice in this case.

17. There is no doubt that the labour court, in leaving it to the petitioner, one of the parties to the dispute, to determine the amount which could reasonably be paid to respondent 4 as back-wages, has abdicated its jurisdiction which has led to a situation wholly opposed to all principles of justice, in which one of the parties to a dispute is empowered to adjudicate upon and settle the dispute, which settlement may be to the prejudice of the other party to the dispute.

18. Although therefore the determination by the Commissioner of Labour of the amount due or payable to respondent 4 and the issue of a certificate by him for the recovery thereof have to be quashed as being wholly without jurisdiction, interests of justice require that the labour court should be directed to perform its duty of determining the exact amount payable to respondent 4.

19. While quashing therefore under Art. 226 of the Constitution the determination by the Commissioner of Labour of the amount to be paid to respondent 4 by the petitioner and the certificate for its recovery issued by him, we make an order under Art. 227 of the Constitution directing the labour court at Bangalore to determine in clear terms the exact amount which, in its opinion, should, in the circumstances of the case, be paid by the petitioner to respondent 4 on account of back-wages. The labour court will decide the issue expeditiously.

20. In the circumstances of the case, the parties will bear their own costs in this writ petition.

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