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Court : Karnataka

Decided On : Aug-16-1962

Reported in : [1963(7)FLR301]; ILR1962KAR690; (1963)IILLJ235Kant; (1963)1MysLJ200

Judge : Ahmed Ali Khan and ;K.S. Hegde, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10

Appeal No. : Writ Petition No. 1111 of 1960

Appellant : Printers (Mysore) (Private) Ltd.

Respondent : Pothan Joseph and ors.

Judgement :

ORDER

Hegde, J.

1. In this petition under Arts. 226 and 227 of the Constitution, the petitioner, namely, the Printers (Mysore) (Private), Ltd., a limited company, has prayed for quashing the order passed by the labour court, Bangalore, on 31 August, 1960. Two different grounds are advanced in support of the petitioner's prayer. Firstly, it is contended that the impugned order is vitiated, as the presiding officer did not conform to the principles of natural justice. It is nextly urged that the order in

question is an invalid order as it was made on a reference which was not subsisting on the date the same was passed, i.e., on 31 August 1960.

2. The facts material for the purpose of pronouncing on the contentions advanced before this Court are as follows : On 1 April, 1948 the petitioner appointed Mr. Pothan Joseph, respondent 1, as the editor of Deccan Herald, a paper run by the petitioner. On 1 April, 1948 the petitioner and the respondent 1 entered into a written agreement. As per the terms of the agreement, the contract was to last for a period of five years. That agreement was renewed on 20 February, 1953, but to be effective from 1 March, 1953, for a further period of five years. Respondent 1's services were terminated on 17 March, 1958. In that connexion respondent 1 raised some disputes. Sometime thereafter, at his instance, respondent 2 moved the State Government for referring the dispute between respondent 1 and the petitioner to the labour court under S. 10 of the Industrial Disputes Act. The dispute was ultimately referred to the labour court. Before the labour court, one of the contentions raised on behalf of the petitioner is that the reference made by the Government is not a valid reference. That contention came to be considered as a preliminary issue. The preliminary issue framed is :

'Is the order of reference invalid and illegal ?'

3. Arguments was heard on that issue on 18 March 1960. But the Court reserved its order.

4. On 11 April 1960, respondents 1 and 2 filed some notes of arguments before the labour court and that without notice to the petitioner. The petitioner says that he came to know about that fact several days after the written arguments were submitted and then he applied to the labour court to give him an opportunity to meet the arguments advanced in the notes submitted. The above application was filed by him on 7 June, 1960. No orders were passed on that application. The petitioner reminded the labour court about his application dated 7 June 1960, on 20 June, 1960 and again on 29 July, 1960. But nothing came out of these applications. The petitioner's prayers were wholly ignored by the labour court and on 16 August, 1960, i.e., about five months after the arguments were heard, that court proceeded to pronounce order on the preliminary issue. As per that order the

petitioner's objects to the reference were overruled and it was held that the reference in question is valid in law. It is contended that the order of the labour court is vitiated as that court allowed itself to be influenced, or at any rate likely to have been influenced by submissions made behind the back of the petitioner. It is further contended that the procedure adopted by the labour court is abhorrent to our sense of justice.

5. On behalf of respondent 1 it was urged by Sri V. L. Narasimha Murthi that most likely the labour court did not look into the notes of arguments. According to him, the order passed by the labour court does not indicate that it had relied on the submissions made in the argument notes. We do not have the notes of arguments before us and therefore, it is not possible for us to hazard a guesses whether the labour court was influenced by those notes or not. It may be mentioned that the presiding officer of the labour court who is a party to these proceedings and who has been served with a copy of the affidavit filed by the petitioner, has not thought fit to file any counter-affidavits setting out the circumstances under which he received the notes of arguments, or the use to which the same was put. Under those circumstances, the contention advanced by Sri V. L. Narasimha Murthi that probably the labour court did not take any assistance from the argument notes can at best be characterized as a conjecture. But whether the labour court relied on the arguments or not is beside the point. It should not have afforded justification to the charge that it did not hold the balance evenly between the parties. It should not have received any mote of arguments behind the back of the opposite party. Further, when the petitioner prayed for an opportunity to meet the contentions advanced in the notes of arguments, it was bound to hear him. In matters like this, the true principle is, not whether the labour court was really influenced by the notes of arguments submitted to it, but whether there was possibility of its being influenced. It is a trite saying that justice should not only be done, but must also appear to have been done. This is one of our cherished principles, and any departure from this principle will be viewed with disfavour by this Court. The attitude adopted by the presiding officer of the labour court in this case calls for severe criticism. His order on the preliminary issue is clearly vitiated as he did not observe the principles of natural justice.

6. It was next contended by Mr. Nambiar, the learned counsel for the petitioner, that on the day the labour court pronounced its order on the preliminary issue, the original reference was no more in existence and therefore that order is not valid in law. There is force in this contention. Under the original reference made on 25 October, 1958, the State Government purported to refer an industrial dispute existing between the petitioner and its workers. This is what the preamble to that reference says :

'Whereas the Government of Mysore are of opinion that an industrial dispute exists that an industrial dispute exists between the workers and the management of the Printers (Mysore) (Private), Ltd. . . .'

7. It is true that at the foot of the order referring the dispute it is mentioned that a copy of that order has been sent to the general secretary, Mysore State Journalists' Association, District Office Road, Bangalore-2. But the reference in question clearly says that the dispute referred is the one existing between the petitioner and its workers. No dispute between the petitioner and the Mysore State Journalists' Association was referred to the labour court. Evidently, the State Government later realized or was made to realize that the reference in question was defective and therefore, by its order dated 13 April, 1960, it amended the original reference by saying that the dispute referred was a dispute between the petitioner and the Mysore State Journalists' Association. Sri v. V. L. Narasimha Murthi contended that the defect in the reference is an immaterial defect and that the parties were never in doubt about the true scope of reference. In all references under S. 10, the two material requirements are :

(1) the dispute referred must be an industrial dispute; and

(2) the parties to the dispute should be clearly mentioned.

8. It cannot be said that mistakes in a reference, as regards the identity of the parties to the dispute are not material defects. In view of the amendment of the reference, it was necessary, at any rate, it would have been appropriate for the labour court to notify the parties about the amendment in question and thereafter give the parties an opportunity to put forward their case in the light of the amended

reference. We have earlier noticed the preliminary issue raised. That issue ceased to be of any importance after the amendment. But the amendment, we are told, has given rise to other questions. The petitioner has raised various contentions in his affidavit. We have not examined the correctness of those contentions. For the present, suffice it to say that the preliminary issue as framed had ceased to be of significance after the reference was amended. Hence, the order made by the labour court on 16 August, 1960 has no real significance. At present the amended reference is the real reference.

9. For the reasons mentioned above, we quash the order of the labour court and direct that court to proceed with the reference before it according to law in the light of the observations made above.

10. We are informed that the work of the previous labour court is now distributed between two courts - one stationed at Bangalore and another at Hubli. The parties to these proceedings are residing in Bangalore. Therefore, we direct that the labour court at Bangalore shall proceed to hear this case unless other steps are taken according to law.

11. In the circumstances of the case, we direct the parties to bear their own costs in this Court.

Ahmed Ali Khan, J.

12. I agree.

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