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Court : Karnataka

Decided On : Jun-17-1964

Reported in : (1967)IILLJ169Kant

Judge : M. Sadasivayya and ;T.K. Tukul, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1)

Appeal No. : Writ Petition No. 2454 of 1963

Appellant : Parameshwara Ayyar M.K.

Respondent : Mysore Machinery Manufacturers Ltd. and anr.

Judgement :

Tukul, J.

1. The petitioner has prayed for a writ of certiorari to quash the award dated June 20, 1963, passed by the industrial tribunal in Mysore, Bangalore, and for a writ of mandamus directing the respondent to reinstate the petitioner to his original post of an accountant.

2. The facts of this case are very simple. The petitioner was appointed as an accountant, on probation for a period of six months in the first instance on March 30, 1959, in the office of the respondent. He joined service on April 7, 1959. On October 5, 1959, the respondent extended his period of probation for a period of four months with effect from October 7, 1959. On April 1, 1960, the respondent issued another order extending the services of the petitioner for a period of six months with effect from February 7, 1960. On June 6, 1960, the petitioner was served with a notice to the effect that his service will be terminated from July 7, 1960.

3. On receipt of this notice, the petitioner served on the respondent a lawyer's notice on June 22, 1960, making certain allegations against the management and questioning their right to terminate his services. The respondent issued a further notice on June 28, 1960, to the petitioner informing him that his conduct in issuing a lawyer's notice containing false and incorrect allegations amounted to misconduct and that the management was obliged in the interest of maintenance of discipline amongst the members of the staff to terminate his services as accountant on probation forthwith. Thereafter, there was a reference made by the State Government to the industrial tribunal under S. 10(1)(d) of the Industrial Disputes Act.

4. The main question referred to the tribunal was as regards the legality and propriety of the termination of the services of the petitioner and of his right to reinstatement with back-wages. Besides these contentions, there was also a contention as regards the nature of the petitioner's services, viz., whether he continued to be on probation at the date of the impugned notice of termination. On the evidence, the tribunal came to the conclusion that the petitioner was still a probationer, that by virtue of the standing orders as also by the terms of the order of appointment. the management could have terminated the petitioner's services by a day's notice, and that the notice dated June 28, 1960 was invalid and inoperative. Having held so, the tribunal

addressed itself to the question of the relief to which the petitioner was entitled. It came to the conclusion that the petitioner's services had been validly terminated by a notice dated June 6, 1960. In view of this finding, the tribunal passed an award directing the respondent to pay to the petitioner his salary for the period from June 28, 1960, till his services were deemed to be terminated on July 7, 1960.

5. The petitioner challenges the validity of this award before this Court. Sri Jagannatha Shetty, the learned advocate appearing for the petitioner, does not press the contention that his client had become permanent even though no order of confirmation had been passed in the case. He has, however, argued that the management had no authority to terminate his services before the expiry of the period of probation and that the order of the period of probation and that the order of termination of his services, dated June 28, 1960, for misconduct was bad in law as he was not afforded a reasonable opportunity to meet the charge. He has further contended that the order dated June 28, 1960, having been held to be illegal, the only order which the tribunal could have passed is one of his reinstatement and not of directing respondent merely to pay the salary from 28 June 1960 to 7 July 1960.

6. So, the first contention that requires consideration is about the competence of the respondent to terminate the petitioner's service before the expiry of the period of probation. In this connexion, reference may be made firstly to the relevant portion of the order of appointment and secondly, to the relevant standing order applicable to the industrial concern. The order of appointment, dated June 30, 1959, to quote only the relevant passage, reads thus :

'You will be on probation for a period of six months in the first instance from date of joining service and will be subject to confirmation if your work and conduct are efficient and satisfactory. As per the company's rules, during the probationary period the company can terminate the appointment at a day's notice.'

7. It would be manifest from this term embodied in the order of appointment that the respondent had the right to terminate the petitioner's appointment during the probationary period on a day's notice. The standing order dealing with probation is rule 2 and the relevant portion of it is :

'A probationer may be discharged during the period of probation with a day's notice.'

8. It would thus be clear that the respondent was not bound to wait till the expiry of the period of probation if prior to that date he decided to terminate the petitioner's appointment. In fact, it would appear from Ex. W. 8, dated June 6, 1960, that the petitioner was given a month's notice before his services were terminated on July 7, 1960. We, therefore, find no substance in this contention.

9. The next question submitted for our consideration by the learned advocate is as regards the validity of the notice, dated June 28, 1960 (vide Ex. W. 7.), by which the respondent informed him that his service had been terminated on account of his misconduct by reason of the false and incorrect allegations contained in his lawyer's notice dated June 22, 1960. It appears from the award passed by the industrial tribunal that it was conceded on respondent's behalf that that notice was invalid and inoperative. Sri Ullal, appearing for the respondent, concedes the position.

10. Sri Jagannatha Shetty submitted for the petitioner that, as this notice dated June 23, 1960 was illegal, the only order that the tribunal could have passed was one of his reinstatement and not of directing the respondent merely to pay him his salary from June 28, 1960 to July 7, 1960. It may be pointed out that this contention does not appear to have been taken up before the tribunal. It is also not taken up before this Court in the affidavit filed with the writ petition. The tribunal had to consider the reliefs which the petitioner was entitled to, if the termination of his services was held to be illegal and improper. In so considering, the tribunal addressed itself to the question of the legal position that would exist between the parties if the second notice was to be held illegal. The tribunal has taken the view that when the second notice has been held to be inoperative, there was nothing which could militate against the competency of the respondent to terminate the services of the petitioner in pursuance of his first notice, dated June 6, 1960. Sri Jagannatha

Shetty's argument that the first notice merged with the second notice does not appeal to us. The second notice which has been held to be illegal and inoperative, cannot efface the validity and legal effect of the first notice. In this view, the order passed by the tribunal is clearly sustainable. There is no error calling for interference at the hands of this Court.

11. We accordingly dismiss this writ petition with costs. Advocate's fee Rs. 50.

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