

i.T.C. Ltd. Vs. Presiding Officer, li Additional Labour Court and anr.

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Court : Karnataka

Decided On : Aug-20-1996

Reported in : (1997)ILLJ589Kant

Judge : K.S. Bakthavatsalam, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(4), 10A and 17 and 17B

Appeal No. : W.P. No. 9028/1996

Appellant : i.T.C. Ltd.

Respondent : Presiding Officer, li Additional Labour Court and anr.

Advocate for Pet/Ap. : Mr. Kasturi

Judgement :

ORDER

1. The petitioner challenges an interim order passed by the II Additional Labour Court, Bangalore, in I.D. No. 117/90 dated October 10, 1995 - Annexure - A, by which an interim relief has been granted to the worker at the rate of his last drawn salary per month from August 2, 1995.

2. When the petition came up for preliminary hearing, it has been taken up for final disposal by the consent of the parties.

3. The 2nd respondent was dismissed from service by the petitioner after holding enquiry and an application under Section 10(4)(A) was is filed by the 2nd respondent stating his dismissal based on enquiry is bad in law. The Labour Court held that the domestic enquiry against the 2nd respondent is not fair by an order dated August 2, 1995. The 2nd respondent has filed an application on May 29, 1990 seeking for an interim relief. The petitioner filed objection petitions stating that the petition is vague and it is not maintainable. However, the Labour Court taking note of the fact that the 2nd respondent is not gainfully employed elsewhere, granted his last drawn salary as an interim relief. This interim relief is granted to the 2nd respondent from the date of the order of setting aside the domestic enquiry dated August 2, 1995. In doing so, the Labour Court has passed a very cryptic order though certain decisions were cited before the Labour Court by the petitioner before this Court. Aggrieved by this order the petitioner is before this Court.

4. The petitioner alleges that the Labour Court has no jurisdiction to grant the last drawn pay as interim relief inasmuch as the grant of such relief would amount to granting of the main relief itself. The petitioner alleges that by granting the interim relief the Labour Court has virtually deemed the employee to continue in service and such orders cannot be passed by the Labour Court as interim order when the matter is pending adjudication before the Labour Court. Another contention raised is that the interim relief can only be given in cases of reference under Section 10(1)A of the I.D. Act, 1947 and not in the proceedings under Section 10(4)A of the Act. It may be stated here that this contention is not pressed in to service by the counsel for the petitioner. It is also alleged by the petitioner that the Labour Court could not have granted the last drawn pay as interim relief as that would amount to disposing of a part of the reference itself before pronouncing an order finally as to the justification of the dismissal itself. According to the petitioner, the order passed by the Labour Court in this case is similar to an order under Section 17B of the I.D. Act for which the Labour Court has no power.

5. Though no statement of objections is filed in view of the fact that the point in this case is purely a question of law, the learned counsel for the respondent No. 2 argued supporting the order passed by the Labour Court.

6. The learned counsel for the petitioner contends that the Labour Court has passed an interim order in this case which cannot be supported in law. According to the learned counsel for the petitioner, the doctrine of relation back fully cannot be applied when the Labour Court decided to pass an interim order pending adjudication of the case. According to the learned counsel for the petitioner, the Labour Court has not considered the decisions cited by the petitioner and has passed a very cryptic order without referring to any of the decisions. The learned counsel for the petitioner relied upon a Judgment of this Court which is reported in 1967 FJR 136 (Mysore Cements Ltd. v. Siddaramiah), wherein Rama Jois, J., (as he then was) has laid down principles with regard to the passing of interim orders by the Labour Court. The learned counsel has also relied upon the Judgment of the Bombay High Court reported in (1995-11-LLJ-548) (Bharat Petroleum Corporation Ltd. v. Ramnath Jagdish Tiwari And Others), wherein the learned Single Judge of the Bombay High Court has held that ordering payment of full back wages till final award is made is bad in law. Thus, the learned counsel also pointed out that V. P. Mohan Kumar, J., in I.L.R. 1995 Kant 2912 M/s. Karnataka Industrial Co-operative Bank Ltd. v. G. P. Gopal has upheld an interim order passed by the Labour Court granting 90% last drawn wages after discussing the entire case laws on the subject with regard to the powers of the Labour Court to pass interim orders. The learned counsel for the petitioner contended that Mohan Kumar, J., has not (Sic) appreciated the decision of Rama Jois, J., (as he then was), which has been cited supra and this Court should follow the principles laid down by Rama Jois, J., (as he then was) in 1967 FJR 136 as the learned Judge has laid down certain guidelines and principles with regard to the grant of interim relief by the Labour Court in such circumstances. The learned counsel also pointed out that the Labour Court cannot grant the whole relief in the guise of passing the interim order in an application for interim relief and what has been done in this case by the Labour Court is not valid in law. According to the learned Counsel for the petitioner, the Labour Court has given the main relief itself while passing the order on the application for interim order. The learned counsel for the petitioner draws my attention to a Judgment of the Supreme Court in (1996-II-LLJ-751) Anup Engineering Ltd. v. Shreenarayan Kanaiyalal) wherein the Labour Court has held as follows :

'At the interlocutory stage the High Court ought not to have pronounced on the question of law namely whether the dismissal relates back to the date on which the employee was dismissed or whether it takes effect from the date of Labour Court's Award. That was the main issue to be decided in the proceedings before the Labour Court. The interlocutory relief has been granted by the High Court also on that basis.'

This Judgment seems to be an appeal from a Judgment of the Gujarat High Court which is reported in the same volume in 1995 LLR 698. A reading of the Judgment of the Gujarat High Court shows that the learned Judge of the Gujarat High Court has decided the issue of principle of doctrine of relation back when the subject matter was pending in reference. It seems the reference was pending before the Labour Court and when the hearing of the reference did not progress, an application was made for interim so relief for a direction that the employer to be directed to pay full salary from the date of dismissal till date of final award in the reference. The Labour Court dismissed the interim application. On a writ petition filed by the workman the Gujarat High Court gave a direction to the employer to give full salary to the petitioner - workman from the date of dismissal till the date of final award in the reference is granted. When this matter was taken up to Supreme Court by the management, the Supreme Court has held as stated supra.

7. Per contra, the counsel for the respondent contended that the Supreme Court in (1991-I-LLJ-120) (Desh Raj Gupta v. Industrial Tribunal IV, U. P., Lucknow And Another) has held that the order of dismissal passed by the management is declared illegal and if the punishment, however, upheld subsequently by the Tribunal, the date of dismissal cannot relate back to the date of employer's illegal order and the workman is entitled to salary for the period from the date of dismissal to the date of award. Relying upon this decision and also the decision of Mohan Kumar, J., (Supra) the learned counsel for the respondent-2 argued that the order passed by the Labour Court cannot be said to be arbitrary and the Labour Court has exercised the discretion properly while passing the interim order and this Court cannot interfere in the order passed by the Labour Court on the facts and circumstances of the case. The learned counsel pointed out that while the Mysore Cement's case (supra) decided by Rama Jois, J., (as he then was),

before the Judgment of the Supreme Court and as such the Judgment cannot be taken as it has to be seen binding in such matters especially when an interim relief is granted to a workman by a Labour Court considering the facts and circumstances of a particular case. The learned counsel for the respondent also relied upon the same case decided by Mohan Kumar, J., and contended that the payment of last drawn salary in this case cannot be said to be illegal and the order passed by the Labour Court does not require interference of this Court on the facts and circumstances of the case.

8. I have considered the arguments of the learned counsel Sri K. P. Rao for the petitioner and the learned counsel for the respondent Sri Phadke. In (1959-11-LLJ-544) (Hotel Imperial, New Delhi v. Hotel Workers' Union) the Supreme Court held that under Section 10(4) of the [Industrial Disputes Act, 1947](#) interim relief where it is admissible can be granted as a matter incidental to the main question referred to the Tribunal, even if the question of interim relief has not been referred to it in express terms. So, the power of the Labour Court or (sic.) the Industrial Tribunal as held by the Supreme Court under Section 10(4) is the incidental power. Held that the Labour Court or the Tribunal has to grant an interim relief, the next question is, how the Labour Court can proceed in the matter if it decides to grant the interim relief. In my view it depends upon the facts and circumstances of each case. The case before me is a case where the Labour Court has come to the conclusion that the domestic enquiry is vitiated and the petitioner management is given an opportunity before the Labour Court to prove the misconduct of the 2nd respondent. At this stage, the Labour Court is asked to grant interim relief by the 2nd respondent. When once the domestic enquiry is set aside, it is said to be bad in law. It is settled law that as held by the Supreme Court in *Desh Raj Gupta v. Industrial Tribunal* (Supra) where the dismissal of the workman order of dismissal passed by management declared illegal and the punishment, however, upheld subsequently by Tribunal, the date of dismissal cannot relate back to the date of employer's illegal order. The Supreme Court has held that the workman is entitled for the salary from the date of dismissal to the date of award. That being the case, as rightly pointed out by the counsel for the respondent, even assuming the Labour Court passed the award against the 2nd respondent, surely he will get the back-wages up to the date of award. When such is the case, I do not see why the

Tribunal should not order as an interim measure that the 2nd respondent to be paid the last drawn wages. It is true that Rama Jois, J., as he then was, has held in Mysore Cement's case (Supra) that Section 10A of the Industrial Employment (Standing Orders) Act, 1946 can be applied when a workman is entitled for an interim relief. That alone cannot be taken as the principles or guidelines to arrive at the quantum of interim relief. The learned Judge has taken note of the fact that the subsistence allowance fixed under Section 10A of the Act provides the guidelines and can be taken into consideration by the Labour Court while passing an interim order. That is all. In my view after the Judgment of the Supreme Court cited i.e. - Desh Raj Gupta's case, (Supra) the other consideration for the Labour Court can be the amount the workman can get assuming the award is going to be passed against him by the Labour Court. In my view the Judgment of Rama Jois, J., (as he then was) cannot be taken as laying down the law with regard to the interim claim for ever. One of the modes which can be taken into is the judgment of the learned Judge in Mysore Cement's case. The other aspect that is can be looked into is in the order of the Tribunal. The amount or backwages the worker will get assuming for a moment the award is to be passed against him, if that is taken into account, I do not think it can be said that the order passed by the Labour Court in this case to pay the last drawn salary can be said as arbitrary. After all, the interim order is to be in force till the award is to be passed by the Labour Court. Once the award is passed, the interim relief goes and the workman cannot claim anything under the order passed by the Labour Court. I do not think that the order of the Labour Court gets vitiated just because the last drawn salary has to be paid by the petitioner till the Labour Court passes the award. I do not agree with the argument of the learned counsel for the petitioner that the main relief itself has been granted by way of ancillary relief in this case simply because the last drawn salary is paid to the 2nd respondent. The grant of interim relief in my view is purely discretionary. While exercising the discretion, the Court or Tribunal exercises its discretion. I do not think that this Court need interfere with the order granting interim relief by the Labour Court in a petition under Article 226 of the Constitution unless it is perverse. Considering the facts and circumstances of the case, I am of the view that it cannot be said that the order passed is vitiated or it calls for the interference of this Court under Article 226 of the Constitution. The case relied on by the

learned counsel for the petitioner in (Anup Engineering Ltd. v. Shreenarayan Kanaiyalal) (Supra) is not applicable to the facts of this case. As already stated the main relief itself has not been granted by way of ancillary relief by the Labour Court in this case nor the Labour Court has ordered the back wages to be paid to the second respondent. It is not a case of Labour Court ordering full wages to the worker pending the reference from the date of dismissal. It is only an order pending reference.

Mr. Kasturi, learned Counsel for the petitioner contended that the statute itself under Sec. 17-B of the I.D. Act provides for interim relief under certain circumstances and as such it may not be open to the Court to allow interim relief on the same basis which the statute provides for under Section 17-B of the I.D. Act, 1947. I am not able to appreciate the arguments of Mr. Kasturi. Just because Sec. 17-B of the I.D. Act provides for a particular mode of payment as an interim relief, it does not mean that this Court has no jurisdiction to allow interim relief at the last drawn scale of pay. What is stated under Sec. 17B is a statutory recognition and what has been done earlier by courts is pending disposal of the industrial disputes.

9. The cases relied by the petitioner especially in the case of the Bombay High Court in (1995-II-LLJ-548) (Supra), wherein the Labour Court has ordered to pay the full back wages from the date of setting aside the domestic enquiry. That is not the case here. The interim relief is granted only after the Labour Court held that the domestic enquiry against the 2nd respondent is not fair i.e. from August 2, 1995. The Labour Court has not ordered the back wages to be paid to the 2nd respondent. I am of the view that this can be taken as a guideline when the Labour Court arrives at the quantum of interim relief. I do not see any infirmity in the order of the Labour Court. Hence, the petition is dismissed.