

P.B. Kumar Vs. P.O., li Additional Labour Court and anr.

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Court : Karnataka

Decided On : Dec-10-1999

Reported in : [2000(84)FLR1014]; ILR2000KAR396; (2000)ILLJ1059Kant

Judge : Y. Bhaskar Rao, C.J. and ;A.V. Srinivasa Reddy, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33 and 33(3)

Appeal No. : W.P. No. 5822/1995

Appellant : P.B. Kumar

Respondent : P.O., li Additional Labour Court and anr.

Advocate for Def. : K. Kasturi, Adv. For Respondent No. 2

Advocate for Pet/Ap. : T.S. Anantharam, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.V. Srinivasa Reddy, J.

1. A controversy which has been hanging fire for long, atleast so far as this Court is concerned has cropped up again and we propose to resolve this controversy by the following order.

2. The question is:

When the Labour Court seized of a matter under Section 33(3)(b) of the Industrial Disputes Act has power to make an interim order to pay full or part of the wages to the dismissed workman pending final orders?

3. The brief facts of the case are:

The petitioner was working in the 2nd respondent Hotel at Bangalore as Electrician in the maintenance department with effect from March 15, 1971. He was charge-sheeted on August 27, 1991 over an alleged misconduct that on August 13, 1981 at about 6.45 p.m. he stole a Vimal pant piece belonging to one Padma Ranka of Reliance Textiles, who was displaying his products in the hotel of second respondent. An enquiry was conducted and the workman was found guilty. The petitioner workman was dismissed. After the order of dismissal the second respondent filed an application under Section 33(2)(b) for approval. The workman filed objections and the Labour Court by its order dated February 22, 1991 held that the domestic enquiry was bad and invalid. That order of the Labour Court was challenged in W.P. No. 17858/1991 and by order dated September 9, 1991 this Court refused to interfere and dismissed the Writ Petition. Then, the workman filed an application before the Labour Court on September 1, 1994 for interim relief and the Labour Court rejected the application. Hence, the Writ Petition.

4. When the matter came up before the learned single Judge, he having felt that the question needs to be referred to a Division Bench in the light of contradictory rulings laid down by a learned single Judge of this Court, referred the matter to the Division Bench.

5. We have heard the learned Counsel for the parties.

6. In order to arrive at an answer to question in issue it becomes necessary to (sic) excerpt Section 33(3)(b) of the Act to understand the scope and power of the Labour Court under the said provision. It reads:

'33. Conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings - (3) Notwithstanding anything contained in Sub-

section (2), no employer shall during the pendency of any such proceedings in respect of an industrial dispute, take any action against any protected workman concerned in such dispute -

(a).....

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation- For the purpose of this sub-section, a 'protected workman', in relation to an establishment, means a workman who, being a member of the executive or other office-bearer of a registered trade 'union connected with the establishment, is recognised as such in accordance with rules made in this behalf.'

The workman concerned in this case is a protected workman according to the definition of the term 'protected workman' under the Act. There is no dispute about that position.

7. The very question in issue in this petition came up for consideration in I.T.C. Ltd. v. Labour Court Bangalore (1985-I-LLJ-243)(Kant). After elaborate consideration, it was held by RAMA Jois, J. as he then was, that the power to grant an interim order is not a matter of procedure and neither Section 33(5) nor Section 11(1) confers power on the Labour Court to pass, an interim order to pay wages in a proceedings under Section 33. The principle enunciated, thus, was based on the rule of construction that when the provisions of a statute confer power to pass a final order on the designated authority but do not expressly confer the power to pass an interim order, such power can be regarded as implicit in the provision only if the existence of such power is essential for the effective exercise of the power vested in that authority. The learned Judge having come to the conclusion that when the non-existence of power to make a particular interim order would not in any way affect the effective exercise of the power to pass a final order, the power to grant such interim order cannot be read into the provision, laid down the ratio decidendi as under:

'Whether the power to grant an interim order is implicit in the power conferred under Section 33. Non-existence of the power to make an interim order does not, to any extent, render the power conferred under Section 33(2)(b), read with Section 33(5) ineffective or less effective and does not in any way frustrate a final order favourable to workman made under that provision. A final order refusing permission to dismiss or disapproving the dismissal, under no circumstances, become futile or less effective. The petitioner is unable to point out as to how the final order in favour of the workman stands frustrated if no interim order to pay wages is granted. Therefore, it is impermissible to hold that such power exists.'

8. In *Mysore Cements Ltd. v. B.R. Siddaramaiah* Vol. 67, F.J.R. 136 which was a matter arising under Section 10-A of Industrial Employment (Standing Orders) Act, 1946 relating to the power of the Labour Court to grant interim relief to a workman when the proceedings are pending before the Labour Court, RAMA Jois, J, as he then was, held:

'Section 10-A, recently introduced into the Industrial Employment (Standing Orders) Act, 1946, incorporates a uniform law governing the payment of subsistence allowance to a workman of an industry during the pendency of a domestic inquiry into complaints or charges of misconduct against him. Therefore, in every case where a domestic enquiry is set aside by a Labour Court/Industrial Tribunal, and an enquiry into the charges levelled against the workman has to be held by the Labour Court/Tribunal, it could, if the workman concerned is not gainfully employed elsewhere, grant interim relief and in doing so, the quantum of subsistence allowance fixed in Section 10-A of the Act provides the guidelines.'

9. Thus, it has been held by this Court that when a workman is entitled to relief of subsistence allowance pending a domestic enquiry such a relief cannot be provided under Section 33 of the Act. The question is whether on such interpretation the workman could be denied the relief of subsistence allowance in a case where the Labour Court has refused to approve the order of dismissal on the ground that the domestic enquiry held against the workman is bad and invalid. There is no direct ruling on this point by the Apex Court. But the Apex Court in *Fakirbhai Fulabhai Solanki v. The Presiding Officer and Anr.* (1986-II-LLJ-124)

(SC) which was a case where subsistence allowance was denied to a workman suspended pending an application filed before the Tribunal for approval of the dismissal, held at: p. 127 of LLJ

'Because it is difficult to anticipate the results of an application made before the Tribunal it is reasonable to hold that the workman against whom the application is made should be paid some amount by way of subsistence allowance to enable him to maintain himself and the members of his family and also to meet the expenses of the litigation before the Tribunal. And if no amount is paid during the pendency of such an application, it has to be held that the workman concerned has been denied a reasonable opportunity to defend himself in the proceedings before the Tribunal. Such denial leads to violation of principles of Natural justice and consequently vitiates the proceedings before the Tribunal under Sub-section (3) of Section 33 of the Act and any decision given in these proceedings against the workman concerned.'

10. The rationale followed by the Apex Court in the above decision in respect of a dismissed workman whose dismissal was pending approval before the Tribunal under Section 33 is that the workman continues to be an employee during the period when the proceedings for approval of the dismissal was pending consideration before the Tribunal and that the pendency of the proceeding for approval does not put an end to the relationship of master and servant between the management and the workman. Thus, it could be seen that whether the non-existence of the power to make an interim order does or does not, to any extent, render the power conferred under Section 33(2)(b), read with Section 33(5) ineffective or less effective is besides the point. Nor does it matter whether or not the final order in favour of the workman would stand frustrated if no interim order to pay wages is granted. What matters is the relationship of the workman vis-a-vis the management at a given point of time. The setting aside of the domestic enquiry by the Labour Court would inescapably revert the position of the workman vis-a-vis the management to that of a servant and a master and in such cases it has to be construed that the power to grant an interim order is implicit in the power conferred on the Tribunal or the Labour Court under Section 33. If this be the underlying principle which should govern such matters arising before the Tribunal,

then, certainly, a workman who had been dismissed and the dismissal order is pending approval would certainly be entitled to subsistence allowance, more so when the Tribunal has held that the domestic enquiry held against the workman by the management is bad and invalid. This order has become final in that W.P. No. 17858/1991 preferred by the Management against the order holding the domestic enquiry as bad, is also dismissed by this Court on September 9, 1991. Therefore, we have to hold that the proposition of law laid down by this Court in ITC Ltd. v. Labour Court, Bangalore (supra) which is directly opposite to the proposition of law laid down by the Apex Court in Fakirabai's case (supra), is no longer good law and the same is overruled.

11. In the result, for the reasons (sic) stated above, we allow the Writ Petition and set aside the order of the Labour Court dated December 14, 1994 passed in M.A. 1/83, produced as Annexure-A. The matter is remitted to the Labour Court with a direction to determine the amount payable as interim relief and award the same to the workman pending disposal of the dispute before it, after hearing both sides, within a period of three months from the date of this order.

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