SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Management of Machkund Hydro-electric Project Vs. Workmen of Machkund Hydro-electric Project and ors.

Management of Machkund Hydro-electric Project Vs. Workmen of Machkund Hydro-electric Project and ors.

SooperKanoon Citation : sooperkanoon.com/530708

Court : Orissa

Decided On : Oct-03-1969

Reported in : (1970)IILLJ173Ori

Judge : G.K. Misra, C.J. and ;R.N. Misra, J.

Appellant : Management of Machkund Hydro-electric Project

Respondent : Workmen of Machkund Hydro-electric Project and ors.

Advocate for Pet/Ap. : Mr. N.V. Ramdas

Judgement :

R.N. Misra, J.

1. This is an application under Articles 226 and 227 of the Constitution of India made oil behalf of the Management of the Machkund Hydro-Electric Project against the award given by the Industrial Tribunal of Orissa in Industrial Dispute Case No. 8 of 1903, dated 27.7.1964.

2. The Machkund Hydro-Electric Project is a joint venture of the States of Orissa and Andhra Pradesh. The production unit is located within the State of Orissa while the administrative offices and the consumers so far as the State of Andhra

Pradesh is concerned are ail within that State.

3. The State of Andhra Pradesh appointed a committee known as the Hanumantha Rao Committee in September 1956 to examine and recommend wage structures and method of solution of other industrial problems. After the report was submitted in April 1967, the Government of Andhra Pradesh appointed a Special Officer to examine the categorisation of workers and wage differentials in certain Government undertakings as per the recommendations of the said committee, and on 11.2.1960 the State Government gave directions for revision of the categories of workers employed in the Andhra Pradesh Electricity Department and their wage scales. The net effect of the revision in the pay-seals was an increment of Rs. 5 per month iii the minimum wage of each category. In their order of 11.2.1960, the State Government of Andhra Pradesh directed that the benefits contained therein would be effective from 1.8.1958, but in implementing the said direction the advantage was limited to the maintenance and operation division and was not extended to the Construction Division of the Machkund Hydro-Electric Project. Certain disputes arose mainly centering round the question as to whether the advantages extended by order dated 11.2.1960 would not extend to the workers in the construction division of the Project.

4. Ultimately, the State Government of Orissa on 3.8.1963 referred the following disputes under Section 12(5) read with Section 10(1) of the Industrial Disputes Act of 1947 to the Industrial Tribunal of Orissa. The questions that were referred are as follows:

(1) Whether the workers of the work-charged establishment and the nominal muster-roll in the construction side of the Machkund Hydro-Electric Project are entitled to the revised scale of pay as per the recommendations of the Hanumantha Rao Committee, with effect from the 1st August 1958?

(2) Whether the termination of services of Sarbasri N. Swami Kanu, Chowdhury Narayan Patnaik, Bairagi Panigrahy and N. Raju Naidu, workmen of Machkund Hydro-Electric Project, is legal and justified.

If not, what relief they are entitled to?

The management raised an initial objection as to the maintainability of the reference on the ground that the State Government of Orissa was not the appropriate Government competent to make the reference. On merits several contentions were raised, parties gave evidence and placed documents before the tribunal. The question of jurisdiction was not decided by the tribunal as the learned Counsel appearing for the management did not press the contention. The tribunal came to hold that the workers of the work-charged establishment and the nominal muster-roll in the construction side were entitled to the revised scale of pay with effect from 1.8.1958, and the termination of service of the four workers named above was not legal and justified and they must be taken to be in continuous service until they retired and they were entitled to all advantages on that basis.

5. The State Government of Andhra Pradesh made an order on 25.2.65 wherein it was stated:

The Government have decided the revised scales of pay as per the recommendations of the Hanumantha Rao Committee may be allowed to the workers employed on the construction side of Machkund Hydro-Electric Scheme with effect from 1.9.1964, i.e., the date from which the increase in dearness allowance of Rs. 5 per mensem was granted to the workers of the various branches of the P.W.D. and that the rest of the concessions allowed in the judgment of the Industrial Tribunal, Orissa, viz., increased scales of pay with effect from 1.8.1958 and payment of retirement benefits under the existing rules in respect of the four workmen whose services were terminated, should be contested by filing a writ in the High Court.

Mr. N.V. Ramdas, appearing for the petitioner, raises the following contentions:

(1) The industrial dispute was not maintainable on account of the fact that State Government of Orissa had no jurisdiction to make the reference under the provisions of the Industrial Disputes Act.

(2) The direction giving retrospective benefit with effect from 1.8.1958 is erroneous and should not be sustained.

(3) The four employees named in the order of reference are not entitled to any benefit.

(4) The nominal muster-roll of workers (hereinafter referred to as 'N.M.R. workers) are not entitled to any benefit.

We proceed to examine these contentions of Mr. Ramdas one after the other.

6. The first contention of Mr. Ramdas is a reiteration of the challenge levelled before the tribunal and is based upon the provisions of the Industrial Disputes Act. Section 2(a) of the Industrial Disputes Act defines 'appropriate Government' and normally the test to determine which State has jurisdiction depends upon whether the parties reside within the jurisdiction or whether the subject-matter of the dispute substantially arises within the jurisdiction. This aspect of the matter came up for examination in Lalbhai Tricumlal Mills Ltd. v. Vin (D.M.) 1956 I L.L.J. 557. Chief Justice Chagla said:

The Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within the jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction.

These seem to be also the principles applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Industrial Disputes Act. When the activities of the industry are carried on in two States the Government of the State in which the industry is carrying on its substantial activities would be the appropriate Government competent to make the reference. Between the two parties now before us jurisdiction was raised as a point and this Court in its decision reported in Superintending Engineer v. Workmen : AIR1960 Ori205 found that the Government of Orissa had jurisdiction to make a reference. The management did not dispute the findings of this Court in the said case.

7. As it appears, the question of jurisdiction would have depended upon a finding as to whether the activities of the Project are mainly carried on within the State of

Orissa. The tribunal would have gone into the matter, collected evidence and come to a conclusion. But the management by their own action did not want a determination of the question before the tribunal. The Government Pleader of Andhra Pradesh appearing before the tribunal for the management filed a memorandum saying that the question of jurisdiction may not be decided, and on the basis of such memorandum the learned tribunal stated:

On the 19th April, 1964 Sri Ramachandra Rao, the learned Counsel for the management, submitted a memorandum stating that the question of jurisdiction need not be tried.... Be that as it may, in view of the memorandum filed, the objection raised in the written statement by the management on this point is not considered on merit here. It is assumed that this tribunal has jurisdiction to accept the reference and decide the dispute.

In view of the fact that the jurisdiction of the State Government had been found in a previous case inter partes and in the present case though the dispute on the ground of jurisdiction was raised, it was not allowed to be decided by the action of the management, we did not permit Mr. Ramdas to reiterate the said point before us, The first ground of challenge to the award must, therefore, be overruled.

8. We now proceed to examine the second contention namely, the propriety of the direction of the tribunal to give retrospective benefit to the workers. It is undisputed that under the management the work is divided broadly under the Sections (1) Operation and Maintenance, and (2) Construction.

It is not disputed that the State Government have already extended the benefit to the workmen under the first category with effect from 1.8.58 though the order was made on 11.2.60. Mr. Ramdas did not seriously contend that the work-charged employees were not entitled to the advantages on the basis of the benefits extended to other workmen in the operation and maintenance division. His main attack is concentrated upon the direction of the tribunal in making it retrospective with effect from 1.8.58. In our opinion, the tribunal was absolutely justified in extending the benefit to the workmen under the construction division with effect from the self-same date, that is, 1.8.58. After all, the aim was to assist in the removal of the socio-economic disparities and inequalities which existed between

two categories of workmen in the same establishment, and, therefore, there could be no justification for the tribunal to bring in a disparity between two categories of workmen in the same establishment.

Mr. Ramdas placed some decisions of the Supreme Court to justify his submission that the direction for additional benefits should not have been retrospective. We have examined the facts of each case and are satisfied that the directions given in those cases were eon fined to the facts of each of those cases. Generalisation in such matters is not only improper but is bound to lead to injustice. Facts of each case have to be reviewed in its own light and conclusion is to be arrived at on such basis. In the present case the outstanding feature is that benefits have already been extended to similar workers in another section under the same management, and no justifying reason is indicated excepting the plea that there is national emergency (referring to the Chinese attacks on India in 1962) to justify the differential treatment. We, therefore, find that the tribunal has proceeded on the basis of equality and fair-play in making the direction in question and no objection can be validly raised against such direction. The second contention of Mr. Ramdas must, therefore, be overruled.

9. We now come to examine the third contention relating to the benefit conferred on the four employees. Admittedly these employees have already gone out of service, and benefit which they deserved in terms of the directions in the award has also been given to them. No matter of policy or principle is involved in these claims and on the material on record, the tribunal came to hold that they had actually been in continuous employment for the period. In these circumstances, we do not propose to enter into an examination of this aspect of the dispute particularly because even if the order is challenged no benefit would acme to the management as these particular employees have already gone out of employment on receipt of the advantages in terms of the award. This contention, in such circumstances, does not require further examination and the award cannot be thwarted on this score. This objection also stands overruled.

10. There remains the fourth contention of Mr. Ramdas regarding the advantage to N.M.R. workers. His contention is that these N.M.R. workers are actually casual

employees. The Hanumantha Rao Committee did not examine the case of such casual workers and there was no recommendation in the report covering such workers. Therefore, the question of giving the same benefit to these N.M.R. workers on the basis of the Hanumantha Rao Committee's report cannot arise. Mr. Ramdas contention is that the learned tribunal did not go into the matter in a proper way and did not take into account this aspect of the objection. At the time of hearing we called upon Mr. Mohanty for the workmen to repudiate the contention of Mr. Ramdas that the report does not cover N.M.R. workers. Mr. Mohanty failed to render any assistance in the matter and on examining the report we also did not find any particular recommendation for casual employees like N.M.R. workers. Mr. Ramdas contended that the N.M.R. workers under the operation and maintenance division were not given this advantage on the basis of the Hanumantha Rao Committee's report and the order of 11.2.60 did not cover N.M.R. workers. To be definite in the matter, we wanted Mr. Ramdas to support this contention by an affidavit and accordingly an affidavit has been filed by an employee in the office of the Superintending Engineer, Operation Circle, Vizagapatnam which says that N.M.R. workers under the operation and maintenance division have not been given this advantage.

11. It is true that in settling disputes between employers and workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper though they may not be within the terms of any existing agreement. It has not merely to interpret and give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. But it is also paramount that the ultimate object of the industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair-play and justice.

If the N MR. workers under the other section have not been given the advantages of the order dated 11.2.1960, it is not for the tribunal to create a fresh dispute by extending that benefit to similar employees under the construction division. This would necessarily lead to heartburning and further disputes leading to a situation

of disquiet. The sole basis upon which the tribunal proceeded to extend the benefit to N.M.R. workers under the construction division was its impression that the order dated 11.2.60 also covered the N.M.R. workers under the operation and maintenance division. On the materials referred to above we do not find that such advantages had really been extended to N.M.R. workers of any section under the management by order dated 11.2.60. Therefore, the finding that N.M.R. workers are also entitled to the advantages retrospectively from 1.8.58 cannot be supported being without any positive material on record. In the circumstances, that part of the award of the tribunal by which the benefit has been extended to N.M.R. workers with effect from 1.8.58 must stand vacated.

12. We, therefore, issue a writ of certiorari quashing the direction of the tribunal in its impugned award by which benefit contained in the order dated 11.2.60 has been extended to N.M.R. workers under the construction division of the management. The writ application is partly allowed. We make no order as to costs.

13. It is, however, made clear that if any advantage to N.M R. workers has already been given by order of the Andhra Pradesh Government dated 25.2.65 as extracted above, the same should not be deemed to be affected by this decision.

G.K. Misra, C.J.

I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com