

P. Ittoop Vs. Calicut-wynad Motor Service Private Ltd. and anr.

P. Ittoop Vs. Calicut-wynad Motor Service Private Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/718991

Court : Kerala

Decided On : Aug-21-1969

Reported in : AIR1970Ker279

Judge : P.T. Raman Nayar, C.J. and; V.P. Gopalan Nambiyar, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33(2)

Appeal No. : Writ Appeal No. 200 of 1968

Appellant : P. Ittoop

Respondent : Calicut-wynad Motor Service Private Ltd. and anr.

Advocate for Def. : M. Ramachandran and; C.J. Balakrishnan, Advs. and;Govt. Pleader

Advocate for Pet/Ap. : C.M. Stephen, Adv.

Judgement :

1. On 7-6-1966 the 1st respondent employer decided to dismiss the appellant workman with immediate effect. But, presumably because approval was necessary under Section 33(2)(b) of the Industrial Disputes Act, there being then an industrial dispute pending, the dismissal was actually effected only on 8-12-1966. Until then, it is not disputed, the workman was on duty and was being paid his wages. On the same day, namely, 8-12-1966, a money order for Rs. 105 was sent by the

employer to the workman, and, although it was stated therein that the payment was of one month's salary in lieu of notice, it is beyond dispute that that was a misstatement and that the payment was in relation to and for the purpose of the dismissal. The money order was, however, refused by the workman. Meanwhile, the employer had, on 15-7-1966, applied to the Industrial Tribunal concerned for the necessary approval. The application came on for hearing on 30-8-1967 and it was dismissed by the Tribunal on the ground that, the application having been made five months before the actual dismissal and the tender of one month's wages, there was no compliance with the requirements of the proviso to Section 33(2)(b).

2. It is clear from the facts stated that both the tender of the money and the making of the application related to the dismissal actually effected, and, although these three events were not simultaneous in the sense that they took place at the same time, there can be no doubt that they were all part of the same transaction. It is also clear from the decision of the Supreme Court in *State Bank of Bikaner v. Balai Chander Sen*, 1963-2 Lab LJ 657 = (AIR 1964 SG 33) that approval can be sought and obtained before the actual dismissal. And in this connection it is pertinent to note that what the Section 33(2)(b) is concerned with is the actual dismissal and not the passing of the order of dismissal. Irrespective of when the order of dismissal is made, it is for the actual dismissal and not for the making of the order that approval (which can be either prior or subsequent) is necessary. And it is the actual dismissal, the application for approval, and the payment or tender of one month's wages, that have to be part of the same transaction. We might also observe that, while it is settled by the decisions of the Supreme Court -- reference need be made only to *Lord Krishna Textile Mills v. Its Workmen*, 1961-1 Lab LJ 211 = (AIR 1961 SC 860) that although the two conditions, namely, the making of the application for approval and the tender of one month's wages are concurrent conditions, the question whether the tender has been made falls for consideration in granting or refusing the approval, this can only be in a case where approval is sought after the dismissal. In a case like the present, where approval is sought before the dismissal, the question whether or not one month's wages have been paid or tendered cannot arise. For, that is a condition that has to be fulfilled only at the time of the actual dismissal.

3. For the reasons stated above, we consider that the learned single Judge was quite right in holding that the Tribunal's dismissal of the application for approval was wrong and in quashing the order made by the Tribunal.

4. The learned single Judge only quashed the order of the Tribunal. He has not made an order granting approval, and it follows that if the employer wants the dismissal of the workman to stand he has to obtain the approval of the Tribunal. The employer's application for the purpose must, now that its dismissal has been quashed, be regarded as pending before the Tribunal. Before the Tribunal there were other contentions raised by the workman, such as mala fides and violation of the principles of natural justice. We should think that the result of the order of the single judge quashing the order of the Tribunal is to leave these contentions at large, the learned single Judge not having affirmed the findings of the Tribunal which were adverse to the workman. But, counsel for the workman says that he is content to urge only one matter before the Tribunal, namely, that the tender made to him by money order was inadequate and did not amount to one month's wages as required by the proviso to Section 33(2)(b). Indeed he made a prayer to the learned single Judge to remit the case to the Tribunal for decision on this question. But, that prayer has been declined, and he naturally apprehends that being so the Tribunal might not allow him to raise it before it.

5. As we have already said the application for approval in this case was made five months before the actual dismissal and the tender of Rs. 105 by money order: Therefore, the application did not and could not have said that the payment enjoined by the proviso to Section 33(2)(b) had been made. The respondent rightly contended, rightly as a matter of fact, not as a matter of law, that he had not been paid one month's wages. But, in the very nature of things, no issue could have been joined on this, the payment being required only at the time of actual dismissal. Nor did the Tribunal consider whether the payment tendered by money order on 8-12-1966 was adequate, although it did at the hearing on 30-8-1967 admit in evidence the refused money order coupon. That was an altogether irrelevant piece of evidence, for, as we have already remarked the question whether there had been a proper payment as required by the proviso to Section 33(2)(b) was not before the Tribunal. But, the dismissal having taken place more

than two years ago, it can now properly arise for determination by the Tribunal and it is now agreed on both hands that the Tribunal may go into the question.

6. It follows that the Tribunal has to decide afresh whether approval should or should not be granted and that by reason of what has been agreed to by both sides the only question before it will be whether the tender made by money order on 8-12-1966 was of one month's wages as required by the proviso to section 33(2)(b).

7. Subject to what has been stated above we dismiss this appeal but make no order as to costs.

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