R. Thiruvirkolam vs The Presiding Officer & Anr on 18 November, 1996

Equivalent citations: AIR 1997 SUPREME COURT 633, 1997 (1) SCC 9, 1997 AIR SCW 321, 1997 LAB. I. C. 443, (1996) 10 JT 369 (SC), 1997 (1) SERVLJ 218 SC, (1997) 1 ESC 167, (1997) 90 FJR 349, (1997) 2 GUJ LR 1563, (1997) 75 FACLR 136, (1997) 1 LABLJ 400, (1997) 1 LAB LN 127, (1997) 1 SCT 387, (1997) 1 SERVLR 238, (1997) 1 CURLR 1, 1997 SCC (L&S) 65

Author: J.S. Verma

Bench: J.S. Verma, B.N. Kirpal

PETITIONER:
R. THIRUVIRKOLAM

Vs.

RESPONDENT:
THE PRESIDING OFFICER & ANR.

DATE OF JUDGMENT: 18/11/1996

BENCH:
J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T J.S. Verma, J.

The appellant was employed as a technician with M/s Madras Fertilizers Ltd. - Respondent No.2. He was dismissed from service after a domestic inquiry on November 18, 1981 on proof of misconduct. The appellant challenged his dismissal before the Labour Court. The Labour Court found the domestic inquiry to be defective and permitted the management to prove the misconduct before it. On the basis of the evidence adduced before the Labour Court it came to the conclusion that the

punishment imposed was justified as the misconduct. was duly proved. The Labour Court's order is dated December 11, 1985. Appellant then filed a writ petition before the High Court which was dismissed by a Single Bench. The writ appeal filed by the appellant was also dismissed by a Division Bench of the High Court. Hence this appeal by special leave.

The leave granted in this appeal is confined only to the question: whether the dismissal will take effect from the date of the order of the Labour Courts namely, December 11, 1985 or it would relate to the date of the order of dismissal passed by the employer, namely, November 18,1981. The only point involved for decision is apparently concluded by the decision of the Constitution Bench in P.H. Kalyani Vs. M/s Air France Calcutta 1964 (2) SCR 104. However, this point appears to have been raised on behalf of the appellant on the basis of certain observations made in Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha .1980 (2) SCR 146, which appear to be contrary.

Reference may be made first to the decision in Kalyani. This point arose directly before the Constitution Bench and such a contention was rejected, making a distinction between a case where no domestic inquiry had been held and another in which the inquiry is defective for any reason and the Labour Court on its own appraisal of evidence adduced before it reaches the conclusion that the dismissal was justified. It was held that in a case where the inquiry was found to be defective by the Labour Court and it then came to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified the order of dismissal made by the employer in a defective inquiry would still relate to the date when that order was made. In that decision it was stated thus:

> " If the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made .....In the present case an inquiry has been held which is said to be defective in one respect and dismissal however to justify the order of dismissal before the Labour Court in view of the defect in the in the inquiry. It has succeeded the Labour will relate back to the date on which the respondent passed the order of dismissal. The contention of the appellant therefore that dismissal in this case should take effect from the date from which the labour courts award came into operation must fail."

(Pages 113 & 114) In our opinion the authoritative pronouncement by the Constitution Bench in Kalyani puts the matter beyond doubt.

We may now refer to the decision by a three-Judge Bench in Gujarat Steel. Krishna Iyer, J. speaking for the three- Judge Bench observed at page 215 (S.C.R) as under:

> "Kalyani (1963 (1) LLJ 679) was cited to support the view of relation, back of the Award to the date of the employer's termination orders. We do not agree that the ratio of Kalyani corroborates the proposition propounded. Jurisprudentially, approval is not creative but confirmatory and therefore relates back. A void dismissal

> is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shell of the Management's order, predating of the nativity does not arise. The reference to Sasa Musa in Kalyani enlightens this position, The latter case of D.C. Roy V. The Presiding Officer, Madhya Pradesh Industrial Court, Indore & Ors. (supra) specially refers to Kalyani`s case and Sasa Musa`s case and holds that where the Management discharges a workmen by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation-back doctrine cannot be invoked. The juris- prudential difference between a void order, which by a subsequent judicial resuscitation comes into being de novo, and an order, which may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a tribunal which is granted, cannot be obfuscated.
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> We agree that the law stated in D.C. Roy (supra) is correct but now that the termination orders are being set aside, the problem does not present itself directly..."

(Page 215) (emphasis supplied) Apparently these observations appear to strike a discordant note, even though Kalyani is referred there-in. The basis of the observations is that "A void dismissal is just dismissal and does not exist". In other words, the reason for making these observations is that a void order does no come into existence until by a subsequent judicial resuscitation it comes into being inasmuch as a void order is still born. Is this assumption jurisprudentially correct?

It is significant that the Constitution Bench decision in Kalyani, by which the three-Judge Bench was bound, is referred in Gujarat Steel and attempt made to indicate that there is no difference in the view taken therein. It is also significant that agreement is expressed with the decision in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore & Ors., 1976 (3) SCR 801, to which Krishna Iyer, J. was a party and in which Kalyani has been expressly followed. It has now to be seen whether the above observations in Gujarat Steel are in consonance with Kalyani and D.C. Roy and also conform to the juristic basis indicated therein.

The above extract from Kalyani which contains ratio of the decision clearly indicates that the above observations in Gujarat Steel are not in conformity with Kalyani. In Kalyani it was held that the defect found in the domestic inquiry is nullified by proof of misconduct on the basis of evidence adduced before the Labour Court so that there is no ground available for the Labour Court is whether the order of punishment should be set aside on any ground and when the Labour Court ultimately reaches the conclusion that even though the inquiry was defective, there is material to justify in the punishment awarded, it rejects the challenge to the order of punishment which continues to operate. It is not as if the order of punishment becomes effective only on rejection of the challenge to its validity. Unless set aside by competent court on a valid ground, the order of punishment made by the employer continued to operate. The operation of the order of punishment made by the employer does not depend on its confirmation by the labour Court to make it operative. Unless set aside by a component authority, the order of punishment made by the employer-continues to be effective Obviously this is the ratio of the decision in Kalyani.

The decision in D.C. Roy is by a two-judge Bench to which Krishna Iyer, J. is a party. Therein also it was held that the award of the Labour Court relates back to the date when the order of dismissal was passed by the employer when it found the inquiry to be defective but reaches the conclusion on the evidence adduced before it that the dismissal was justified. After referring to Kalyani it was held in D.C. Roy as under:

> "These observations directly cover the case before us because though the Labour Court in the instant case, found that the inquiry was defective as it infringed the principles of natural justice it come to the conclusion after considering the evidence induced before it that the dismissal was justified. The award of the Labour Court must therefore relate back to the date when the order of dismissal was passed on the termination of the Domestic inquiry".

(Page 805) We may now refer to the juristic principle on which the above quoted observations in Gujarat Steel appears to be based. There is a very useful discussion of the topic under the heading "Void and Voidable" at pages 339 to 344 in Administrative Law by Wade, Seventh Edition. The gist of the discussion in Wade is as under:

> "...Here also there is a logical difficulty, since unless an order of the court is obtained there is no means of establishing the nullity of the list. It enjoys a presumption of validity, and will have to be obeyed unless a court invalidates it. In this sense every unlawful administrative act, however invalid is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well- known passage Lord Radcliffe said:
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> An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

(Pages 341 & 342) "`Void' is therefore meaningless in any absolute sense. Its meaning is relative, upon the court`s willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over `void' of voidable' can be avoided."

(Pages 343 & 344) (emphasis supplied) With great respect, we must say that the above quoted observations in Gujarat Steel at page 215 are not in line with the decision in Kalyani which was binding or with D.C. Roy to which the learned Judge, Krishna Iyer, J. was a party. It also does not match with the underlying juristic principle discussed in Wade. For these reasons, we are bound to follow the Constitution Bench decision in Kalyani which is the binding authority on the point.

We may now refer to later decisions of this Court in Desh Raj Gupta Vs. Industrial Tribunal IV, U.P. Lucknow & Anr., 1990 Supp. (1) SCR 411, and Rambahu Vyankuji Kheragade Vs. Maharashtra Road Transport Corporation, 1995 Supp. (4) SCC 157. In Rambahu, Kalyani and D.C. Roy were followed

by a two-judge Bench and similar view taken that the order of dismissal takes effect from the date on which it was originally passed and not from the date of the Labour Court`s award when the Labour Court, after holding the domestic inquiry to be defective reaches the conclusion on the evidence adduced before it that the punishment awarded was justified. However, in Desh Raj Gupta the observations in Gujarat Steel were relied on for taking different view without any reference to either Kalyani or D.C. Roy which appear to have been overlooked. In these circumstances the decision in Desh Raj Gupta cannot be treated as an authority on the point. Both these decisions were by two-judge Bench.

As a result of the aforesaid decision it must be held that the only point involved for decision in the appeal is concluded against the appellant by the Constitution Bench decision of this Court in Kalyani and the observations to the contrary in Gujarat Steel are, therefore, per incurium and not binding. The order of punishment in the present case operated from November 18, 1981 when it was made by the employer and not from December 11, 1985, the date of Labour Court`s award. The appellant is, therefore, not entitled to any relief.

The appeal is, accordingly, dismissed. No costs.