Hindustan Steel Works Construction ... vs Hindustan Steel Works Construction ... on 11 August, 2005

Author: Arijit Pasayat

Bench: Arijit Pasayat, H.K. Sema

```
           CASE NO.:
Appeal (civil)  3006 of 2003

PETITIONER:
Hindustan Steel Works Construction Ltd. and Anr.

RESPONDENT:
Hindustan Steel Works Construction Ltd. Employees Union

DATE OF JUDGMENT: 11/08/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
```

J U D G M E N T ARIJIT PASAYAT, J.

Hindustan Steel Works Construction Limited (hereinafter referred to as the 'employer') calls in question legality of the judgment rendered by Division Bench of the Andhra Pradesh High Court affirming the order passed by the learned Single Judge holding that withdrawal of construction allowance which was being earlier allowed to the employees working at the Vishakhapatnam was in violation of Section 9-A of the Industrial Disputes Act, 1947 (in short the 'Act'). According to the employees as urged in the writ petition it was done without following the mandatory provisions of Section 9-A and was in violation of principles of natural justice.

Factual aspects need to be noted in brief are as follows:

> Employer started construction work of Vizag Steel Plant in 1979 and employees stationed there were paid Project/construction allowance. The employer discontinued payment of construction allowance and had paid City Compensatory allowance. The withdrawal continued w.e.f. 7.4.1992. On 22.8.1974 a circular was issued by the employer notifying revision of pay scales w.e.f. 1.1.1974. On 17.1.1975 the Ministry of Finance, Government of India issued Office Memorandum with regard to construction projects and grant of project allowance. It was indicated therein that the allowance was intended primarily to compensate the staff for lack of amenities such as housing, schools, markets, dispensaries etc. Since November 1979 the employees were paid project/construction allowance. In 1986 a High Power

> Committee was appointed by this Court to go into the questions relating to the implementation of the recommendations of the Fourth Pay Commission. The final report was submitted on 2.11.1988. The issue relating to project/construction allowance was set out in Chapter 12 of the report. By order dated 3.5.1990 this Court directed implementation of the recommendations of the High Power Committee. According to the appellants there was no restriction on withdrawal of the allowance under the changed circumstances. The allowance was specific and particular in the sense that it was payable under certain circumstances.

Questioning legality of the withdrawal writ petition was filed before the Andhra Pradesh High Court, which was allowed by the learned Single Judge. The primary challenge was that there was clear violation of the mandatory requirements of Section 9-A and, therefore, order was not sustainable. The employer questioned maintainability of the writ petition contending that efficacious alternative and statutory remedy is available under the Act and writ petition was not maintainable, particularly, when factual controversy is involved. The question whether there was violation of the requirements of Section 9-A is essentially one of facts.

The High Court was of the prima facie view that withdrawal of the construction allowance amounted to variation of the terms and conditions of service and, therefore, there was violation of the requirements of Section 9-A of the Act. It was observed that since no factual controversy has been adjudicated, the writ petition was maintainable. Questioning correctness of the view expressed by learned Single Judge writ appeal was filed before the Division Bench which dismissed the appeal holding that the learned Single Judge was correct in his view.

In support of the appeal, learned counsel for the appellants submitted that both the learned Single Judge and the Division Bench did not consider the specific plea that statutory remedy is available to the employees and for that matter the union could not have questioned the legality of the order of withdrawal of construction allowance by filing writ petition. It was further submitted that whether Section 9-A had any application to the facts of the case essentially involves questions of fact and reasoning of learned Single Judge and the Division Bench are not supportable.

In response, learned counsel for the respondent-union submitted that both the learned Single Judge and the Division Bench have noted that on the facts of the case that Section 9-A had clear application and, therefore, there is no infirmity in the judgments to warrant interference.

In a catena of decisions it has been held that writ petition under Article 226 of the Constitution of India, 1950 (in short 'the Constitution') should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

In U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh (2004 (4) SCC 268), it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process

as provided under the statute. To same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantarum Wadke (1976 (1) SCC 496), Rajasthan SRTC v. Krishna Kant (1995 (5) SCC 75), Chandrakant Tukaram Nikam v. Muncipal Corporation of Ahmedabad and Anr. (2002) (2) SCC

542) and in Scooters India and Ors. v. Vijai V. Eldred (1998 (6) SCC 549).

In Premier Automobiles Ltd. case (Supra) it was observed as follows:

> "A speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedure followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them".

Section 9-A of the Act reads as follows:

> "9-A Notice of Change - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, -
>
> (a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (b) within twenty-one days of giving such notice :
>
> Provided that no notice shall be required for effecting any such change -
>
> (a) where the change is effected in pursuance of any (settlement or award); or

> (b) where the workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

In Hindustan Lever Ltd. v. Ram Mohan Ray and Ors. (1973 (4) SCC 141), it was observed, inter alia, as follows:-

> "It is hardly necessary to refer to the various decisions which were cited before us as to what would constitute conditions of service the change of which would require notice under Section 9-A of the Act. In Dharangadhara Chemical Works Ltd. v. Kanju Kalu and Others ((1955) 1 LLJ 316 (LAT.)), the Labour Appellate Tribunal of India held that the increase in the weight of bags to be carried from 1 cwt. to 1 1/2 cwt. was a change in the workload and the company was bound to pay wages as the workmen were willing to work but did not work on account of the unreasonable attitude adopted by the management. In Chandramalai Estate v. Its Workmen ((1960) 2 LLJ 243), the payment of Cumbly allowance was held to have become a condition of service. In Graham Trading Co. (India) Ltd. v. Its Workmen ((1960) 1 SCR
>
> 107) it was held that the workmen were not entitled to Puja bonus as an implied term of employment. In Workmen of Hindustan Shipyard Ltd. v. I.L.T. ((1961) 2 LLJ 526), in the matter of withdrawal of concession of coming late by half an hour (than the usual hour), it was held that the finding of the Industrial Tribunal that Section 9-A did not apply to the case did not call for interference. But the decision proceeded on the basis that the court will not interfere in its jurisdiction unless there was any manifest injustice. In Mcleod & Co. v. Its Workmen (1965) 5 SCR 568),the provision for tiffin was held to be an amenity to which the employees were entitled, and the provision of cash allowance in lieu of free tiffin directed to be made by the industrial tribunal could not be considered to be erroneous in law. In Indian Overseas Bank v.

Their Workmen ((1967-68) 33 FJR 457), "key allowance" was treated as a term and condition of service. In Indian Oxygen Limited v. Udaynath Singh ((1970) 2 LLJ 413 :

> (1970) 2 FLR 350), withdrawal by the management of the supply of one empty drum at a time at reasonable intervals was held not to contravene Sections 9-A and 33. In Oil & Natural Gas Commission v. Their Workmen ((1972) 42 FJR 551), where there was nothing to show that it was a condition of service that a workman should work for 6 1/2 hours only, no notice of change was held to be required under Section 9-A for fixing the hours of work at eight. In Tata Iron & Steel Co. v. Workmen ((1972) 2 SCC 383), change in weekly days of rest from Sunday to some other day was held to require notice. A close scrutiny of the various decisions would show that whether any

> particular practice or allowance or concession had become a condition of service would always depend upon the facts and circumstances of each case and no rule applicable to all cases could be culled out from these decisions."

(Underlined for emphasis) In Basant Kumar Sarkar and Ors. v. Eagle Rolling Mills Ltd. and Ors. (1964 (6) SCR 913) the Constitution Bench of this Court observed as follows:

> "It is true that the powers conferred on the High Courts under Art. 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to s. 10 of the Industrial Disputes Act, or seek relief, if possible, under sections 74 and 75 of the Act."

We find that the learned Single Judge observed that he was not entering into the factual controversy, overlooking the fact that the question relating to applicability of Section 9-A is essentially question of fact. The Division Bench did not discuss the basic issues about the applicability of Section 9-A and whether on the facts of the case Section 9-A has really any application. It was disposed of with the following observations:

> "The employees concerned are workmen within the meaning of that term as defined under Section 2(s) of the Act and withdrawal of construction allowance from them tantamounts to a change in the conditions of service. In that view of the matter, the management of the appellant company ought not to have withdrawn the construction allowance presently paid to the employees without issuing notice envisaged under Section 9-A of the Act."

The inevitable conclusion, therefore, is that both learned Single Judge and the Division Bench have failed to consider the basic issues. In the normal course we would have left it to the respondent to avail appropriate remedy under the Act.

However, because of the long passage of time (the writ petition was filed in 1997), the attendant circumstances of the case in the background noted above and in view of the agreement that this is a matter which requires to be referred to the Tribunal, we direct that the appropriate Government shall refer the following question for adjudication by the appropriate Tribunal:

> (1) Whether there was violation of Section 9-A of the Industrial Disputes Act, 1947 as claimed by the employees?
>
> (2) Whether the withdrawal of the construction allowance amounted to the change in the conditions of service?

The parties shall jointly move the appropriate Government with a copy of our judgment.

Normally, it is for the State Government to take a decision in the matter of reference when a dispute is raised, the direction as noted above has been given in the circumstances indicated above.

In some cases, this Court after noticing that refusal by appropriate Government to refer the matter for adjudication was prima facie not proper, directed reference instead of directing reconsideration. (See Nirmal Singh v. State of Punjab AIR 1984 SC 1619, Sankari Cement Alai Thozhilalar Munnetra Sangam v. Management of India Cement Ltd. (1983) 1 Lab.L.J. 460, V. Veerarajan and others v. Government of Tamil Nadu and Ors. (AIR 1987 SC 695), Sharad Kumar v. Govt. of N.C.T. of Delhi (AIR 2002 SC 1724).

The parties shall be permitted to place materials in support of their respective stands. We make it clear that we have not expressed any opinion on the merits of the case.

The appeal is allowed to the aforesaid extent with no order as to costs.