Madras High Court
Thangavelu And 10 Ors. vs The Buckhingham And Carnatic Co. ... on 10 October, 1950
Equivalent citations: (1950) 0 LLJ 1219 Mad
Bench: P Rajamannar, A V Sastri
ORDER

1. In exercise of the powers conferred on them by Section 10(1) of the Industrial Disputes Act, 1947, the Government of Madras referred the disputes between Messrs. the Buckingham and Carnatic Company, Limited (hereinafter referred to as the company) and their employees to the Second Industrial Tribunal, Madras, for adjudication. The disputes related to wages, dearness allowance, reinstatement and other conditions of service. The enquiry before the tribunal had practically come to a close by the middle of May 1950. On 4th July 1950 a petition was filed by the company under Section 33 of the Act seeking permission to discharge ten of their workmen on the ground that they were surplus to requirements and therefore had to be retrenched. The ten workmen were made respondents to this petition and notices were served on them to appear before the tribunal to make their representations in the matter. On 10th July 1950' the president of the Madras Labour Union appeared before the tribunal on behalf of the ten workmen and a counter-affidavit was filed raising various objections to the request of the company. A preliminary objection was taken on behalf of the company that it was unnecessary in law to give notice to the workmen and to embark on an elaborate enquiry after giving opportunity to both sides to adduce all evidence which they chose. This objection was heard in limine and the tribunal held that on a request of the employers for permission under Section 33 of the Act, it was not necessary to hear the workmen and that the tribunal should act upon the materials placed before it by the employers and either grant or decline the permission sought. In this view, the tribunal refused to take any evidence on behalf of the workmen. On the material placed before it by the company, the tribunal considered it proper to grant the company permission to retrench the ten workmen. It may be mentioned that these ten workmen were offered alternate jobs on reduced rates of wages which they could accept if they wished to. But this fact is really not material for the disposal of this application. The petition now before us is by these ten workmen to issue a writ of certiorari to quash the order made by the Second Industrial Tribunal giving permission to the company to discharge them.

2. The only ground which was pressed before us by the learned Counsel for the petitioners was that the tribunal contravened the rules of natural justice in passing an order against them without hearing them and giving an opportunity to represent their case. To establish this ground, counsel had to contend that the order of the tribunal granting permission to the company to discharge them was an order binding on them and therefore it was a judicial order as it decided and its result was to affect the rights of parties. It was also contended that this order deprived them of all remedies which they would otherwise have had under the general law or under the provision of any special enactment.

3. We may say at the outset that if we had been convinced that the order granting permission to the employer under Section 33 of the Act is an order which was final and conclusive and amounted to an adjudication as to the validity and propriety of the discharge, we would not have hesitated to quash the order. It is now too well established that a judicial or quasi-judicial order cannot be passed so as

to bind a party and to his detriment without an opportunity being furnished to that party to represent his case. The only question therefore is to examine the scope of the order and its legal implications.

4. Section 33, as it now stands after the Industrial Disputes (Appellate Tribunal) Act XLVIII of 1950, is as follows:--

Conditions of service, etc., to remain unchanged during pendency of proceedings.--During the pendency of any conciliation proceedings or proceeding before a tribunal in respect of any industrial dispute, no employer shall--

(a) alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings or

(b) discharge, punish whether by dismissal or otherwise any workman concerned in such dispute save with the express permission in writing of the conciliation officer, board or tribunal as the case may be.

Now what are the consequences if an express permission of the officer, or board or tribunal is not taken and the employer contravenes the provisions of Section 33. Firstly, the employer can be punished under Section 31(1) of the Act. Secondly, the employee aggrieved by such contravention may make a complaint in writing to the tribunal which shall adjudicate upon the complaint as if it were a dispute referred to or pending before it and shall submit its award to the Government. But nothing is said in the Act as to what happens if the express permission in writing is given by the tribunal. Negatively it may be said that the employer will not be liable to be punished under Section 31. It may also be said that if, after obtaining express permission, the employer does any of the things mentioned in Section 33, the aggrieved employee cannot have his complaint adjudicated upon in the course of the pending proceeding.

5. There is nothing in the Act which declares that the permission granted by the tribunal under Section 33 would amount to a decision or adjudication. When a reference is made to a tribunal it submits its award to the Government after enquiry under Section 15(1). On receipt of such award the Government shall by order in writing declare the award to be binding. Under Section 19(3) an award so declared to be binding comes into operation on such date as may be specified by the Government and remains in operation for such period not exceeding one year as may be fixed by the Government. There is a provision in exceptional circumstances for the award ceasing to be in operation before the expiry of the period fixed, but the maxi-mum period for which an award can remain in operation is only one year. Section 18 specifies the parties on whom the award could be binding. It is clear from Section 33A of the Act that if an employer discharges any workman in contravention of the provisions of Section 33, i.e., without obtaining the express permission in writing of the tribunal then there is an adjudication upon the propriety of such discharge and the conclusion of the tribunal in the matter is submitted as an award to the Government and the above provisions of the Act will apply to such an award. It will be binding on the parties. But there is no provision for incorporating the permission granted under Section 33 in the award which the tribunal

would submit in the proceeding pending before it; nor is there provision for the permission itself being treated as a decision or an award.

6. The language is very inappropriate to justify us to elevate the permission granted under Section 33 to the status of a judicial or quasi-judicial order. Ordinarily, there is no provision in the Act which makes it incumbent on the employer to obtain the previous permission of any officer or board or tribunal, before he proceeds to discharge or punish any workman or alter the conditions of service applicable to them. Any such action by the employer may after it is done become the subject-matter of an industrial dispute. It is only then that the Act' provides remedies by way of a reference or otherwise. Section 33 provides for an exceptional contingency, namely, when any conciliation proceeding or proceeding before a tribunal in respect of an industrial dispute already referred to it is pending. During that period, it was evidently thought necessary to prevent the employer from resorting to any intimidation or coercion by taking drastic action against the workmen by discharging or punishing them or altering to their detriment the conditions of service applicable to them. It is with this end in view that Section 33 must have been enacted. Under that section the employer should place the material circumstances before an independent body like the tribunal and obtain its permission before it proceeds to any action which may affect the employees. Presumably the tribunal would not grant the permission unless it was prima facie convinced that the proposed action of the employer was not capricious and arbitrary and not due to ulterior motives. This is all that Section 33 does. It may be that, after obtaining the permission, the employer may refrain from taking the action permitted. It is only when the action is actually taken, say, by discharge, that the employee or employees would be aggrieved.

7. We are unable to follow the argument of the learned Counsel for the petitioners that on account of the permission granted by the tribunal, the petitioners are deprived of all their remedies in law and cannot get any redress for the wrong done to them. In answer to a question from us as to what would have been the remedies of a discharged workman if proceedings had not been pending before the tribunal and therefore Section 33 had no operation, learned Counsel mentioned three, (1) going on strike, (2) filing a suit and (3) raising an industrial dispute and seeking a reference to an industrial tribunal. Obviously the permission granted under Section 33 by itself would not render a suit, if it otherwise was, not maintainable. Nor did the counsel try to convince us to the contrary. He had also to concede that a reference under Section 10 of the Act may be open to him to seek, provided the case of the discharged workmen was taken up by the other workers and an industrial dispute thereby resulted. What he mainly pressed before us--and very emphatically--was that the petitioners had been deprived of the remedy by way of strike. Of course there is no question of the discharged workmen going on strike, What counsel meant was that these discharged workmen could have induced the other workers to go on strike. But--so he argued--Section 23 prevents any workmen to go on strike during the pendency of proceedings before the tribunal and two months after the conclusion of such proceedings. It is clear that what really prevents a strike is not the permission under Section 33 but the prohibition in Section 23. This prohibition of strikes is only for a temporary period and nothing prevents a strike after the expiry of that period. We confess that it is rather strange to speak of a strike as a remedy at law, but we have assumed that it might be so for the purpose of this argument.

8. Section 33 appears to us to be just an emergency provision which prevents an employer from taking any action against any workman during the pendency of proceedings under the Act either before a tribunal or conciliation officer without obtaining the permission of the tribunal or the officer. The legality or propriety of the action of the employer is not intended to be adjudicated upon under that section. We find an exactly analogous provision in the new Act XLVIII of 1950 with reference to the pendency of proceedings before the Appellate Tribunal. Section 22 of that Act runs thus:--

During the period of thirty days allowed for the filing of an appeal under Section 10 or during the pendency of any appeal under this Act, no employer shall--

(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the riling of such appeal, or

(b) discharge or punish whether by dismissal or otherwise, any workmen concerned in such appeal save with the express permission in writing of the Appellate Tribunal Section 23 of that Act corresponds to Section 33A of the Industrial Disputes Act of 1947. We do not think that the Appellate Tribunal should conduct an elaborate enquiry after notice to the workmen before granting the permission under Section 22.

9. Under the Industrial Disputes Act, there can be an award by the tribunal; there may be in some cases a decision by the tribunal. It is not contended that the order of the tribunal granting permission is an award. We have already given reasons for holding that it cannot even amount to a decision. If however, the order amounts to a decision, then, under Section 7 of Act XLVIII of 1950, an appeal will lie to the Appellate Tribunal from such a decision. That is the specific remedy provided by statute. If the appeal lies, it is certainly an adequate remedy. It is a well-established rule of practice that this Court will not issue a prerogative' writ of certiorari if there is another adequate remedy.

10. For all these reasons the petitioners are not entitled to any order from this Court on this application which is dismissed.