Management Of Kattabomman Transport ... vs P. Sundaram And Anr. on 15 December, 2004

Equivalent citations: (2005)ILLJ1065MAD, (2005)1MLJ247

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Bench: P.D. Dinakaran, F.M. Ibrahim Kalifulla

JUDGMENT

P.D. Dinakaran, J.

1. The appeal is directed against the order of the learned single Judge dated February 2, 1998, dismissing the Writ Petition No. 19615 of 1997 filed by the petitioner challenging the order dated February 12, 1997 passed by the second respondent, refusing to approve the order of dismissal of the first respondent herein on the reason that the conditions contemplated under Proviso to Section 33(2)(b) of the Industrial Disputes Act viz., (i) the order of dismissal should be accompanied with one month wages; and (ii) an application shall be made by the employer to the authority before which the proceedings are pending, for approval of the action taken by the employer, were not complied with.

2. The order dated February 12, 1997 of the second respondent was challenged by the appellant herein in W.P.No. 19615 of 1997 on the ground that there were sufficient reasons for the delay in sending the petition to the competent authority for approval. However, the Industrial Tribunal by its order dated February 12, 1997, refused to go into the reasons for the delay in view of the narrow scope of Section 33(2)(b) of the Act as interpreted by the Apex Court in Lord Krishna Textile Mills v. Its Workmen, , finding the Tribunal is not expected to act as an appellate Court on such finding.

3. Both Mr. Jayaprakash, learned counsel for the appellant and Mr. P. Jothimani, learned counsel for the first respondent reiterated the submissions made before the learned single Judge.

4. We have given our careful consideration to the submissions made on behalf of both sides.

5. After going through the order of the learned single Judge, we are of the considered opinion that no interference is required in the order of the learned single Judge, dismissing the writ petition following the decision reported in Lord Krishna Textile Mills v. Its Workmen (supra), whereunder it is held as follows:

> "The proviso requires that no such workman shall be discharged or dismissed unless two conditions are satisfied, the first is that the employee concerned should have

> been paid wages for one month and the second is that an application should have been made by the employer to the appropriate authority for approval of the action taken by the employer. Further, the appropriate authority dealing with such approval application could not examine the facts as an appellate Court. It is well known that the question about the adequacy of the evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is as limited under Section 33(2)(b)."

6. It is well settled that the jurisdiction of the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act is limited viz., to test the compliance of the conditions prescribed therein. Once the conditions contemplated have not been duly complied with by the employer, the sufficiency or satisfactory character can only be raised in a Court of facts/appellate Court, which is entitled to consider facts, the decision of the Constitution Bench in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, , further strengthens the view taken by the learned Single Judge, wherein it is held as follows at pp. 839 & 840 of LLJ:

> "13. ..... The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory, this apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to

ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need for a separate or specific order for his reinstatement..... "

7. Once, the order of the Tribunal declining the approval is held invalid, nothing more is required to be done by the workman, as it would have to be deemed that the order of dismissal or discharge had never been passed and consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available and therefore, there is no need of a separate or specific order for reinstatement or backwages, as the case may be, as held by the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma (supra). Hence, it goes without saying that in view of the order of the Tribunal dated February 12, 1997 made in Approval Petition No. 39/89, as confirmed in the writ petition dated February 2, 1998 in W.P.No. 19615 of 1997 and by us in the above writ appeal, the first respondent/workman is entitled for all consequential benefits as per law. Finding no reason to interfere with the order passed by the learned singe Judge dated February 2, 1998 in W.P.No. 19615 of 1997, the writ appeal stands dismissed with the above observation. No costs.