Sitaram Vishnu Shirodkar Vs. the Administrator, Government of Goa and Others

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Court : Mumbai

Decided On : Jun-21-1984

Reported in : (1985)ILLJ480Bom; 1984MhLJ566

Judge : G.F. Couto and ;M.R. Waikar, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 10(1)

Appeal No. : W.P. No. 142-B/80

Appellant : Sitaram Vishnu Shirodkar

Respondent : The Administrator, Government of Goa and Others

Judgement :

Waikar, J.

1. This is a petition under Arts. 226 and 227 of the Constitution of India for quashing the order of reference made the Award respondents Nos. 1 and 2 and to quash the Award passed by the respondent No. 3.

2. The petitioner runs an establishment namely a restaurant under the name and style 'Cafe Real' at Panaji, Goa. It is registered under the Shops and Establishments Act. The respondent No. 4 was in the employment of the petitioner since the year 1973. Admittedly, since 1st March, 1978, the respondent No. 4 did not report to duty. A dispute was then raised, for the first time, about 6 months thereafter on 26th September, 1978 by the respondent No. 4 and the conciliation proceedings were held by the Assistant Labour Commissioner in respect of the alleged dispute. The contention of the respondent No. 4 was that he was removed from the service. Whereas the contention of the petitioner was that he used to remain absent from duty without any prior intimation and he abandoned the job from 1st March, 1978 and never turned up. During the conciliation proceedings, the petitioner submitted that in case the workman was not interested, he would be paid his gratuity, leave wages, if any, and other legal dues.

3. Thereafter it appears that on 15th December, 1978 between the representatives of the employer and the employee, certain terms of settlement were worked out, but, the respondent No. 4 refused to accept those terms. The conciliation proceedings having ended in a failure, the reference in question was made by the Government of Goa, Daman and Diu under S. 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication to the Industrial Tribunal.

4. The said Tribunal passed the Award in question holding that the action of the petitioner in terminating the services of the respondent No. 4 was illegal and unjustified and the workman was entitled to be reinstated with full back wages with effect from 1st March, 1978 till the date of reinstatement with 6% interest.

5. Feeling aggrieved by this Award, the present petition has been filed.

6. Shri Joshi, the learned counsel for the petitioner, submitted that the reference in question itself was bad in law. According to him, the termination of the service of respondent No. 4 by the petitioner was assumed and the only question left open for decision was whether the said termination was legal and justified. According to him, the Tribunal could not decide the question whether the respondent No. 4 has abandoned his job which was the contention of the petitioner. He relied upon the observations of the Full Bench decision of the Delhi High Court in M/s. India Tourism Development Corporation, New Delhi v. Delhi Administration, Delhi and others `. The dispute there was whether there was a closure or a lock-out and the terms of reference were :

'Whether the workmen as shown in Annexure 'A' are entitled to wages for a period of lockout with effect from 1st January, 1981 and if so, what directions are necessary in this respect ?'

When a challenge to this reference was raised, this is what the Delhi High Court in the said decision observed :

'It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference .... It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Art. 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration .... We are of the view that the existence of lack-out itself being the real dispute between the management and its workmen, the term if reference proceeds on the assumption that there was lock-out with effect from January 1, 1981. There is a very thin line of distinction between closure and a lock-out. The real dispute between the parties was whether there was at all a lock-out or whether there was violence by the workmen and for that reason there was suspension of the working of the restaurant with effect from January 2, 1981 and whether the closure of the restaurant from February 18, 1981 was proper and for that reason the termination of the services of the workmen was justified and legal. The appropriate Government has failed to take into consideration the entire set of circumstances brought out by the management in the two notice displayed and the replies furnished to the Delhi Administration to come to the conclusion whether it was lock-out or closure. Whether in fact there was a closure or lock-out is the real dispute which can more appropriately be determined in industrial adjudication. The Industrial Tribunal cannot go into that question as the real dispute has not been made the subject matter of the order of reference.'

7. On the statement then made in the case by the counsel for the respondents during the hearing that the dispute whether it was a closure or a lock-out could be investigated by the Industrial Tribunal and no objection would be raised that it was within the scope of reference, repelling such a statement, their Lordships observed :

'Such a course could not be adopted. It may be open to the Industrial Tribunal to fine out the exact nature of the dispute from the pleadings of the parties and other material. But the Industrial Tribunal could not enlarge the scope of the jurisdiction on concession and decide that there was a closure and no lock-out, that would be deciding the foundation of the dispute mentioned in the order of reference. Such a jurisdiction is not vested in the Industrial Tribunal. We are, therefore, of the opinion that the order of reference has to be quashed as the real dispute has not been referred.'

8. We are in respectful agreement with the above observations of the Full Bench of the Delhi High Court. In the instant case also the real dispute was whether the services of the respondent No. 4 were terminated or he had voluntarily abandoned the services and the reference that was made to this effect.

'Whether the action of the Management of M/s. Hotel Cafe Real, Panaji in terminating the services of Shri. Shanu Mango Kunkolienkar, with effect from 1st March, 1978 is legal and justified. If the answer be in the negative, to what relief, if any, is the aforementioned workman entitled to ?'

The Tribunal could not travel beyond the reference and decide the question whether the respondent No. 4 had abandoned his services. That the petitioner had terminated the services of the respondent No. 4 was an act fastened on the petitioner by this reference and the only question left open for decision was whether the termination was legal and proper. In this view of the matter in our opinion, the reference itself was bad and has to be quashed. Shri Joshi raised one more submission that the establishment of the petitioner was registered under the Shops and Establishments Act which was the complete Code itself and the respondent No. 4 should have taken recourse to the provisions of the Act. Though S. 39 of the Act provides that no employer shall without a reasonable cause and except for misconduct terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee at least one month's notice in writing, no provision has been pointed out to us for seeking necessary relief. There is a provision under S. 52 of the Act for punishing the erring employer for breach of the provisions of S. 39. However, it is not necessary for us to decide the question whether the respondent No. 4 could not approach the authority under the Shops and Establishments Act. As observed, the reference made by the Government of Goa, Daman and Diu, in our opinion, is bad and is hereby quashed. It is open to the Government to consider whether a fresh reference should be made or not.

9. Rule is made absolute. The reference and the Award in question are hereby set aside and quashed. There would, however, be no orders as to costs.