

PETITIONER:
VISHWESHWARIAH IRON & STEEL LTD.

Vs.

RESPONDENT:
ABDUL GANI & ORS.

DATE OF JUDGMENT: 11/11/1997

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

THE 11TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice S.b. Majmudar
Hon'ble Mr. Justice M. Jagannadha Rao

Dhruv Mehta, G.M. Misra, Fazlin Anam, Ms. Sofia Verma and
S.K. Mehta, Advs. for the appellant

O R D E R

The following order of the Court was delivered:

Learned counsel for the petitioner referred us to a decision of a Bench of two learned judges of this Court in the case of R. Thiruvirkolam v. Presiding Officer & Anr. reported in (1997) 1 SCC 9 which has been later followed by Bench of three learned Judges in the case of Punjab Dairy Development Corporation Ltd. & Anr. V. Kala Singh & Ors. reported in (1997) 6 SCC 159. In our view, these are the cases where the management held defective inquiry and before the Labour Court or the Industrial Tribunal the defect was sought to be removed by leading evidence and ultimately of the Court seized of a reference under Section 10 of the Industrial Disputes Act agreed with the management on the new evidence led before it, the question of relation back of the order of the Labour Court or Industrial Tribunal to the original order of termination would assume importance. But in cases where no domestic inquiry is held at all, as in the present case, in our view the aforesaid decision not apply.

Learned counsel is very sanguine when he contends that the decision of the Constitution Bench in the case of P.H. Kalyani v. M/s Air France Calcutta reported in (1964) 2 SCR 104 squarely applies to the facts of the present case also and for that purpose he submits that the observation in the Constitution Bench judgment regarding M/s. Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan & Ors. reported in (1959) Supp. 2 SCR 836 would not apply in connection with the termination orders passed without domestic inquiry and that ratio of the Constitution Bench admittedly enquiry was held by the management before terminating the services of the employee. In our view, these observations in Kalyani's case were rendered in connection with proceeding for approval of the management's action under Section 33(2) of the Industrial Disputes Act, 1947. Even Sasa Musa Sugar Work's

case also pertains to a proceeding under Section 33(1) of the I.D. Act for permission. Therefore, the observations of the Constitution Bench in Kalyani's case in connection with Sasa Musa Sugar Works' case which is under Section 33(1) of the Act will require a closer scrutiny in so far as they are to be applied to a proceeding arising out of a reference under Section 10 or 10-A of the Industrial Disputes Act which would stand on a different footing.

The moot question would arise whether the ratio of the Constitution Bench judgment in Kalyani's case would almost automatically apply to such cases apart from the cases arising under Section 33 of the I.D. Act. We may, in this connection, mention that the decision of the three Judge Bench of this Court in Gujarat Steel Tubes Ltd. & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors. reported in (1980) 2 SCC 593 wherein Krishna Iyer, J., spoke for the majority, was an authority on the question of leading evidence before the Industrial Court in proceedings under Section 10-A of the act and on the question of relation back of ultimate penalty order passed by the arbitrator on the basis of evidence led by the management for justification of its action before such tribunal. Therefore, the question would arise whether the ratio of this decision would still apply to a case where the proceedings relate to Section 10 or 10 A of the Act apart from Section 33 of the act. The latter decisions of this Court have applied the ratio of the decision in Kalyani's case to matters arising under Section 10 and 10-A of the Act. In our view, therefore, the dispute in the present proceedings could be better resolved by a Constitution Bench of this Court which can consider the scope and ambit of the decision of the earlier Constitution Bench judgment in Kalyani's case which has been the sheet-anchor of the subsequent cases referred to earlier on which a strong reliance has been placed by learned counsel for the petitioner and which had nothing to do with proceedings under Section 33 of the Act. The latter decision of this Court will also, therefore, require a re-look.

Leave granted.

The appeals will now be placed for final disposal before a Constitution Bench of this Court pursuant to the present order.

Printing dispensed with. All the relevant documents are permitted to be filled by the parties concerned.

Notice to issue on the prayer for interim relief. There will be ad interim stay of the order of the Division Bench of the High Court to the extent of 50% of the back wages.