

(1985) 12 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 4712/85

Ambabai Manjunath Amin

APPELLANT

Vs

P.L. Majumdar Presiding Officer First Labour Court, Thane and others

RESPONDENT

Date of Decision : 16-12-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(8), 12, 2A, 33C(2)

Citation : (1987) 1 LLJ 36

Hon'ble Judges : S.K. Desai, J;H.N. Kantharia, J

Bench : Division Bench

Judgement

Desai, J.—In this Writ Petition, Petitioner who is the widow of one M. B. Amin has impugned the decisions given by the Presiding Officer, First Labour Court, on 12th September, 1984 and thereafter on 26th July, 1985. In order to appreciate the controversy, a few fact may be stated. We may add that, to our mind, the position is abundantly clear and the decisions require to be quashed. However, we are writing an elaborate judgment for the guidance of Labour and Industrial Courts in the city.

2. One M. B. Amin (hereinafter referred to as "the employee") was in the employment of the 2nd Respondent Company. The 2nd Respondent will hereinafter be referred to as "the employer". The employee commenced employment with the employer as a Peon from 1954 and was promoted as an Overseer in the year 1963. Ultimately, his emoluments increased and, according to the Petitioner, his last drawn wages were Rs. 1,211.73 per month. On 25th April, 1976, the said employee was served with an order of transfer directing him to go to Gauhati (Assam). He did not comply with the order and the contention is that he was sick and it was subsequently detected that he was suffering from T.B. Indeed, from 4th August, 1976 the employee was admitted to the T.B. Hospital at Sewri and was treated in the said Hospital upto 8th October, 1976. On the said date he was discharged with advice to take rest with medical treatment

for two months thereafter. According to the Petitioner, on 9th October, 1976, the employee has gone and met the Labour and Welfare Officer of the employer and the latter was informed about the employee's sickness and that he would report for work from 7th December, 1976. It is claimed that necessary certificate had been also submitted. However, on 4th December, 1976, during the period when the employee was resting on medical advice and receiving medical treatment for earlier illness viz. T.B., the employer terminated his services. A copy of the order of termination is annexed as Exhibit "A" to the Writ Petition. The employee thereafter raised an industrial dispute and after the usual proceedings envisaged under the Industrial Disputes Act, which proved infructuous, a reference was made by the Deputy Commissioner of Labour (Administration), Bombay, on 1st December, 1978. The Copy of the reference has not been shown to us, but we may proceed on the assumption that the same concerned the employee's claim for reinstatement with continuity of service and back wages. The reference was one u/s 10, 12 and 2A of the Industrial Disputes Act, 1947.

3. After the reference was made the parties filed their respective pleas as well as indicated the documents on which they relied. Unfortunately, the reference made in 1978 was not taken up for hearing for four years, which fact is a sad commentary on the inadequacy of Labour Courts provided by the State Government in Maharashtra. Judicial notice should be taken of the fact that the number of Judges and Courts (both Labour and Industrial) falls far short of the requirements and yet no steps seem to be taken in this "progressive" State to rectify the situation. This perhaps resulted in this reference not being attended to for four years. On 23rd December, 1982, the said employee expired leaving behind him the Petitioner as his widow.

4. On 22nd February, 1984, the Petitioner filed an application that she may be impleaded and allowed to contest the reference. It is true that the application was filed after a considerable lapse of time, but there will be no question of not condoning the delay, if any was required to be condoned, after apprising oneself of the widow left with a number of minor children in such predicament. On this application for being brought in the reference in the place and stead of the deceased employee, the Presiding Officer, First Labour Court, Thane, passed an order on 22nd September, 1984 holding that the application was liable to be rejected. The learned Judge placed reliance on a decision in V. Veeramani Vs. Madurai District Cooperative Supply and Marketing Society Limited, Madurai and Another,

5. After disposing of the said application, the learned Judge of the First Labour Court, Thane, made an Award in the reference holding that the reference had abated by death of the employee.

6. In the very same year, it would appear that a review application was filed by the Petitioner which was numbered as Miscellaneous Application No. 75 to 1982. This was based upon the amended provisions of Section 10(8) of the Industrial Disputes Act and it was contended that since the amended provision came into

effect on 18th August, 1984, i.e. before the date of the aforesaid Orders, the orders passed on the initial application and the Award were improper and liable to be reviewed. In reply affidavit several contentions were taken by the employer opposing the said review application. The said application was also rejected by the Presiding Officer, First Labour Court, Thane, who upheld the contention raised on behalf of the employer to the effect that the reference had abated on the death of the employee, although the Award or the order so declaring, was passed in September, 1985. According to the First Labour Court, as the death had occurred prior to the amended provisions being brought into force, the amended provisions were of no avail. There are also scattered observations in the impugned order dealing with the scope of a review application.

7. All the three orders, i.e. the initial order rejecting the application passed on 12th September, 1984, the Award made on 12th September 1984 and the order dismissing the review application passed on 26th July, 1985, have been impugned in the Writ Petition.

8. We will first advert to the provisions contained in sub-section (8) of Section 10 of the Industrial Disputes Act, 1947. The said provisions read as under :

"No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an Industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government."

Properly understood, the sub-section (8) of Section 10 implies that the effective hearing of the Award must continue despite the death of one of the parties and an order on merits of the rival contentions should be pronounced and not that an Award dismissing the reference or rejecting the claim simpliciter should be passed by reason of death. If the provision has to have any real and substantial meaning, it can only be read to imply that the cause of action which is not personal to the worker will enure for the benefit of his heirs and legal representatives and will be gone into by the Tribunal or the Labour Court or the Industrial Court which will dispose of the matters referred to it as are necessary for deciding these points.

9. The Legislature made the position clear by introducing the amended provisions which came into force on 18th August, 1984 and they must be deemed to apply to all references and other procedures which were pending on that day. To dispose of the review application on the footing that the reference had abated on the death of the employee which took place prior to his death was neither proper nor correct.

10. Even apart from the provisions contained in sub-section (8), we are afraid that the learned Presiding Officer of the First Labour Court was entirely in error in following the decision of the Madras High Court. There is a series of decisions in Industrial Jurisprudence taking contrary view and based on the correct principles

to be applied. With respect to the learned Judge of the Madras High Court, in deciding V. Veeramani's case, they seem to have approached the question from an erroneous angle by posing the question as to there is any provision in the Industrial Disputes Act for bringing the heirs on record. That surely cannot be the proper approach to the question. The question to be posed really is whether on the death of the employee, any part of the cause of action against the employer, in respect of which the reference is made, survives and enures for the benefit of his heirs and legal representatives. If the entire cause of action is personal to the worker and comes to an end on the death of the worker, then certainly there can be no question of bringing the heirs on record and continuing the reference. In such a case, even after the amended provision Section 10(8) was introduced, the Award will have to be declared recording the death of the workman and the conclusion of the Labour Court or the Industrial Court that no part of the cause of action survived for the benefit of the heirs and legal representatives. However, if the present claim made by the employee and indicated in the reference is properly scrutinised and analyzed, we find that this does merely consist of a claim for reinstatement (which claim must certainly die or come to an end on the death of the employee), but included on the claim is a claim for back wages from the date of purported wrongful termination of services to the date of reinstatement or, since death has occurred till the date of death. It cannot be that, if it can be demonstrated that termination was improper invalid and, therefore, illegal the employer obtains a benefit of having the entire claim come to an end by the fact of death, particularly in the background of a Tribunal or a Court not being able to proceed to a hearing for four years after the reference was made.

11. The position, as far as applications u/s 33C(2) are concerned and as far as Writ Petitions are concerned, has been made more than amply clear by a number of decisions of this Court as well as other Courts. A brief reference may be made to these decisions. In Sitabai Naruna v. Auto Engineers 73 Bom L.R. 749 A Division Bench of this Court was considering an application u/s 33(c). It was held that the cause of action would survive for the benefit of the widow and she would have the right to claim the arrears of gratuity due to her husband from his employer. It may be mentioned that in V. Veeamani's case, an attempt has been made to distinguish applications u/s 33C(2), but we do not think the distinction is real or substantial. What the Court has to decide or adjudicate upon and what relief it can grant (or refuse) does not depend upon the format of the proceedings but upon the several pleas and issues arising for adjudication before it. Once this is accepted, a proper scrutiny of the reference, as we have made earlier, would seem to indicate that a money claim was implicit in the reference and if that be so, such monetary claim would seem to survive for the widow and other legal representatives of the deceased employee. If it so survived, they were required to be brought on record and the reference proceeded with an Award given on the claim which survived.

12. In a recent judgment of the Madras High Court in K.P. Marimuthu (Since

Deceased), Ramayee, Mariamma, Devaki, Raman, Lakshmanan, Krishnaveni, Anbu Selvi, Bhagyalakshmi and Kumaravalli Vs. The Superintendent of Police, Dharmapuri, The Deputy Inspector General of Police, Western Range, Coimbatore., Inspector General of Police, Mylapore, Madras and State of Tamil Nadu, a Division Bench of the Madras High Court was considering a similar position but arising in a Writ Petition. In the said proceedings the dismissal of a Government servant was challenged. During the pendency of the Petition, the Government servant expired and it was held that his legal representatives could be allowed to continue the proceedings initiated by the deceased Government servant. Chief Justice Chandurkar speaking for the Bench has referred to a number of decisions of various High Courts (See paragraphs 7 and 16 to 25 of the judgment). The aforesaid decision also refers to a Gujarat case in Bank of Baroda v. Its Workman and an Andhra Pradesh decision which has dissented from the Gujarat view. The Division Bench of the Madras High Court expressly dissented from the view taken by the Andhra Pradesh High Court and, in our opinion, correctly.

13. In Bank of Baroda, Ahmedabad v. Its Workmen, 1986 1 LIC 77 the Division Bench of the Gujarat High Court was considering a reference u/s 2A of the Industrial Disputes Act. Several judgments of the other High Courts were considered in the aforesaid Gujarat decision and a reference was also made to Section 306 of the Indian Succession Act. After considering these judgments, the Gujarat High Court observed :

"With great respect to the learned judges of the Assam, Orissa and Patna High Courts, we are unable to agree with their view that on the death of a deceased workman, the heirs and legal representatives of the deceased workman as representing the estate of the deceased cannot continue the reference before the Tribunal." In our opinion, this represents the correct law. Applying that law to the facts before us, we are of the opinion that even apart from sub-section (8) of Section 10, the reference cannot be said to have abated on the death of the employee. His reinstatement undoubtedly was a personal right of the deceased employee and could not be awarded to the widow or the children of the employee. The claim for back wages from the date of purported illegal termination or invalid termination till the date of death on the other hand was a monetary claim, in our opinion, would continue to exist and enure for the benefit of widow and children of the deceased employee.

14. In our opinion, therefore, all the three orders passed by the First, Labour Court, Thane, were erroneous and are liable to be quashed. However we find that deceased employee has expired leaving behind him as his heirs and legal representatives, according to Hindu Law, not only the Petitioner but two sons and two daughters (both unmarried). The proper thing would be to bring all the five on record. We will indicate the reason for this direction. It is possible that after full trial or on a settlement a certain amount of money would be held payable to estate and, if that is so, the Labour Court must then apply its mind and decide as

to whether the entire amount is to be paid to the widow or split up between the widow and the children and where any child is a minor child, the Court must devise, if it holds that some amount is to be awarded to such minor child, how the minor's interests are to be protected till the child attains majority.

15. We may mention further that even in the course of proceedings before the Labour Court, the employer had offered to make some ex-gratia payment. Indeed, we had directed Mr. Sawant to take instructions from his client today as to whether the employer who is in very solvent circumstances can upgrade the offer. We may also add that the Petitioner was not so much interested in money as much as in securing employment for one of her sons. Now in the absence today of Counsel and in the absence of instructions from the 2nd Respondent to the Advocate on record, we are unable to address ourselves on this aspect of the matter.

16. In the result, the Rule is made absolute. All the orders passed by the First Labour Court, Thane, two on 12th September, 1984 and the third on 26th July, 1985, are hereby quashed. The First Labour Court, Thane, or the Labour Court which will stand seized of the matter will pass order directing the widow and the other four children of the deceased employee to be brought on record and thereafter proceed with the hearing of the reference expeditiously. We are conscious that in the further adjudication the widow and the children will suffer from a grave handicap viz. want of proper instructions to the concerned employee. However, the fact that the reference could not be heard for four years initially, is responsible for this sad state of affairs.

17. The petitioner has succeeded and we have held that the employer had taken untenable contentions at both the stages. We must accordingly pass an order of costs compensating the Petitioner for the proceedings in the High Court. Accordingly, we direct the 2nd Respondent to pay to the Petitioner cost quantified in the aggregate at Rs. 1,500/- (One thousand five hundred.)