

(2013) 06 MAD CK 0280

In the Madras High Court

Case No : Writ Petition No. 11608 of 2013 and M.P. No. 1 of 2013

C. Krishnamurthy and Others

APPELLANT

Vs

The Management of Vibromech Engineers Limited and The
Presiding Officer

RESPONDENT

Date of Decision : 04-06-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2), 33(5)

Citation : (2013) 3 LLJ 306

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : S. Sathiamurthi, for the Appellant;

Judgement

D. Hariparanthaman, J.—The petitioners are workmen employed by the 1st respondent management. They filed C.P. No. 328 of 2011 u/s 33(2) r/w 33(5) of the Industrial Disputes Act, claiming 50% of the wages from 22.6.1985 to 6.1.2009 and full wages from 7.1.2009 till the date of filing of the Claim Petition. The claim is based on the order dated 6.1.2009 passed by this Court in Writ Appeal No. 1039 of 1998. The 1st respondent management filed counter affidavit disputing the claim. Thereafter, evidence was let in by the writ petitioners. The first petitioner was examined as P.W.1 and he was cross-examined. 18 documents were marked on the side of the petitioners. During the cross-examination, the 1st respondent marked 11 documents. Thereafter, the 1st respondent took a stand that he did not let in any evidence on their side. At that stage, the petitioners filed applications in I.A. Nos. 116 and 117 of 2013 in C.P. No. 328 of 2011, one to reopen the case and the other to issue summons to the Managing director of the Management to give evidence.

2. After hearing both sides, the 2nd respondent Labour Court passed an order dated 26.2.2013 in I.A. Nos. 116 and 117 of 2013 in C.P. No. 328 of 2011 dismissing the applications on the ground that the petitioners cannot compel the Managing Director to give evidence before the court, particularly when the

management took a stand that they are not letting in any evidence.

3. This Writ Petition is filed to quash the aforesaid order of the Labour Court.

4. The learned counsel for the petitioners has vehemently contended that the Labour Court committed an error in refusing to summon the Managing Director to give evidence. The learned counsel for the petitioners has also relied on two decisions, namely, i) National Textile Corporation (WBAB and O) Limited Unit: Arati Cotton Mills Vs. Learned Second Industrial Tribunal and Another, and ii) V. Veeraraghavan Vs. P.O., Labour Court, Coimbatore and Another, . These decisions were also cited before the Labour Court. Still the Labour Court passed the order, rejecting the applications of the petitioners.

5. I have considered the submissions made by the learned counsel for the petitioners and gone through the orders passed by the Labour Court.

6. Paragraphs 3 and 4 of the order of the Labour Court are extracted hereunder:

3. Therefore, it is duty of the Court to decide whether it is essential to issue summons to the witness R. Ramamurthi, or not to be decided. On behalf of the petitioner, one petitioner namely Krishnamoorthy was examined as W.W.1 and marked 18 documents, on behalf of the respondent management, there is no oral evidence but 11 documents were marked at the time of cross-examination of P.W.1. The counsel appearing for the petitioner cited the judgment of the High Court of Calcutta reported in National Textile Corporation (WBAB and O) Limited Unit: Arati Cotton Mills Vs. Learned Second Industrial Tribunal and Another, and V. Veeraraghavan Vs. P.O., Labour Court, Coimbatore and Another, . In support of his case that this Court has got power to issue summons to the witness at any stage of the case. It is no doubt true that this Court has got power to issue summons to any witness whose appearance and evidence are considered to be material to the case but as per the case hand is concerned, the respondent management filed 11 documents and the same was marked as Ex. R.1 to R.11. It is seen from the records that the present claim petitions were filed by the petitioner on the basis that they are entitled to wages and benefits on the basis of the order dated 6.1.2009 passed by the Hon"ble High Court dated 3.11.08 made in W.P. No. 16499 of 1998 insofar as grant of relief to the respective workmen.

4. So it is not essential to issue summons to the witness Ramamurthi and the examination of this witness is not a material one. So considering the affidavit and also the counter of the affidavit of the respondent, this Court is of the considered opinion that it is the duty of the petitioner to prove their case and the witness ought to be examined is not a material witness and the petition is liable to be dismissed since I do not find any merits in this petition.

For the reasons stated above, this petition is dismissed.

7. The Labour Court has considered the issue at length and has clearly held that the petitioners cannot compel the Managing Director to depose evidence before

the Labour Court. The Labour Court has also held that the claim of the petitioners is only based on the judgment dated 6.1.2009 in Writ Appeal No. 1039 of 1998 and the examination of the Managing Director is not at all necessary. I am in entire agreement with the reasoning given by the Labour Court.

8. The judgments relied on by the learned counsel for the petitioner cannot be applied to the facts of this case. In the first judgment cited by the learned counsel for the petitioners and rendered by the Calcutta High Court in National Textile Corporation (WBAB and O) Limited Unit: Arati Cotton Mills Vs. Learned Second Industrial Tribunal and Another, the Industrial Tribunal held that the enquiry was bad and thereafter refused permission for the management to produce certain documents. In those circumstances, the order of the Tribunal refusing to receive some documents was held to be bad. Rule 15 of the West Bengal Industrial Disputes Rules was considered and the Calcutta High Court held that the Industrial Tribunal may accept or admit or call for fresh evidence at any stage of proceedings to subserve justice.

9. Therefore, I am of the view that this judgment cannot be pressed into service by the learned counsel for the petitioners in support of his submission.

10 The other judgment in V. Veeraraghavan Vs. P.O., Labour Court, Coimbatore and Another, of this Court relied on by the petitioners, is also of no help to the petitioners. In the said case, the employer pleaded that the workmen is gainfully employed and in order to prove the same, the employer wanted to summon document from the Technical Inspector, who maintained certain statutory Registers. The application was rejected. In the said context, this Court held that the document that was sought to be summoned by the management was a relevant one to prove their case. Hence, this judgment cannot be of any use to the petitioners. In fact, this Court put a question to the learned counsel for the petitioners as to whether the petitioners need any documents from the management, which are not produced by the management and those documents are helpful to prove their case. The learned counsel for the petitioners answered that the petitioners are not for summoning any document. On the other hand they compel a person to give evidence contrary to his wish. In my view, it is not permissible. I do not find any infirmity in the order passed by the Labour Court. Hence, the Writ Petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.