
(2011) 07 MAD CK 0358

In the Madras High Court

Case No : Writ Petition No. 16681 of 2011 and M.P. No. 1 of 2011

Coimbatore District Mill Workers Sangam

APPELLANT

Vs

National Textile Corporation Limited

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 12(3), 33, 33(1), 9A

Citation : (2011) 07 MAD CK 0358

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.K. Chandrasekar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is a registered trade union having its affiliation to Centre of Indian Trade Unions (for short CITU). The Petitioner union has filed the present writ petition seeking to restrain the first Respondent from unilaterally altering the service conditions of the workmen employed under the first Respondent management to their prejudice until the conclusion of the conciliation proceedings initiated by the Petitioner union on the question of alteration of shift system pending before the second Respondent. Pending the writ petition, the Petitioner union had also filed M.P. No. 1 of 20011 seeking for an interim injunction restraining the first Respondent from altering the three shift system to two shift system based on the notice, dated 1.7.2011 issued by the first Respondent.

2. The first Respondent is the National Textile Corporation Limited. Under the control of its Southern Regional office, there are several textile mills functioning in the Coimbatore Region. They also include Coimbatore Murugan Mills, Sri Ranga Vilas mills, Cambodia Mills, Pankaja Mills, Kaleeswara B Unit, Pioneer Mills and C.S.& W Mills. There are about 4000 employees employed in these mills. There are about 1200 casual workers. It was also stated that all these textile mills were

functioning in three shift systems for over five decades. The first shift was from 7.00 a.m. to 03.00 p.m., the second shift was from 03.00 p.m. to 12.00 a.m. and the third shift was from 12.00 a.m. to 07.00 a.m. Since it is continuous process, all the mills worked on a 24 x 7 basis. However, for the last one year, the first Respondent was resorting to lay off on the basis of want of orders. The workers were paid full wages for the lay off period. All of a sudden, they had issued a notice dated 1.7.2011 proposing to alter the three shift system into two shift system with a view to avoid the workers being laid off and also to find out full employment for all workers. Therefore, it was stated that day and night shifts alone will be operated and there will not be any second shift, i.e. from 03.00 p.m. to 12.00 a.m. The workers working in three shifts will be divided into two shifts. Instead of different weekly off, all the workers will be given Sunday as weekly off. These measures are only temporary and as soon as the situation became normal, there will be review of shift working. In the same notice, it was also stated that the Electricity Board had imposed a ban on using electricity from 6.00 p.m. to 10.00 p.m. and because of that this extraordinary situation had taken place. There is also slump in the industries and that the stocks of yarns to the extent of 88.31 crores are kept in the go down without being sold. When this extraordinary situation was discussed with the recognized unions, the unions had stated that they are willing to cooperate in the manufacturing process without any lay off being given to workers.

3. Challenging the alteration of shift system, another trade union filed W.P. No. 16046 of 2011 before this Court, seeking for a restraining on the first Respondent from implementing their decision without complying with the provisions of Section 9A of the Industrial Disputes Act, 1947. That writ petition was dismissed on 05.07.2011 by this Court stating that if workers were aggrieved for the infraction of Section 9A, they must raise an industrial dispute before the appropriate conciliation officer.

4. But, in the case of the Petitioner union, they have raised a dispute before the Assistant Labour Commissioner (Central), Madurai. In that dispute, it was contended by them that since alteration of shift system will attract item No. 6 of Fourth Schedule read with Section 9A of the Industrial Disputes Act and since no notice was issued, the impugned notice was invalid. Since workers are not accepting the alteration of shift system, they will continue to report on the earlier shift arrangement. The conciliation officer had initiated conciliation proceedings on 7.7.2011. The following minutes were recorded by the second Respondent:

As the Conciliation Officer and in the interest of the workers & NTC Mill Management, I am suggesting the following:

1. As per the provision of Industrial Disputes Act, 1947 when the Management is having accumulation of yarn stock, shortage of power, the Management has to give lay off wages.
2. When the Management wants to implement any change in the shift system

and working hours, the authorized representatives of the Union must be discussed. Since no due weightage was given to the Union Representatives, the Union Representatives claimed that the decision of the Management is arbitrary in nature.

The Management is advised to maintain status quo i.e. existing practice of 3 shift system in a day.

3. If the Management wants to implement the change of shift system and working hours, the Management has to give lay off wages to the workers at least for 4 weeks and after that, the Management shall have a mutual discussion with the Union Representatives.

4. In the event of introduction of 2 shift system by arbitrary nature of the Management, some of the workers being affected, the NTC Management should not taken any disciplinary action against the workers including monetary loss / benefit.

5. The first Respondent did not agree to the said advice given by the conciliation officer. Therefore by a communication dated 7.8.2011, they have informed the conciliation officer that there was no alteration of condition of service. Hence the question of issuing notice u/s 9A will not arise. It was stated that due to accumulation of yarn stock, the general situation in the textile industry and even private mills in the region have already reduced their production by cutting down one or two shifts, it was beyond the control of the management to run the mills for seven days and round the clock. Under the certified Standing Orders applicable to the mills, the management is entitled to alter and rearrange the shifts and Clause 7 of the standing order provides for the same. In fact already 6 mills coming under the control of the southern regional office including two mills in Tamil Nadu had implemented the changed shift working. The two shift system can be settled after review by watching the new system. With reference to conciliation officer's advice that they will have to give lay off wages, it was stated that unless lay off is declared, the question of payment of lay off wages will not arise. With reference to payment of lay off wages for four weeks, it was stated that since there was no declared lay off, the question of payment of four weeks lay off wages will not arise. On the question of maintaining status quo, it was stated that re-arrangement of shift was in terms of the Standing Orders and it has been done only as a temporary measure. It was also stated by them that the management was always willing to address the practical problems of all of the unions and hence the altered shift system must be allowed to work.

6. However, the Petitioner union filed the present writ petition contending that since the very shift working is the subject matter of the industrial dispute and the conciliation officer has ceased of the matter, without prior permission u/s 33(1)(a) the management cannot introduce the system. In terms of Section 9A read with Section 33(1), the introduction of two shift system was illegal. Since the first Respondent refused to bargain with the union, their action is an unfair

labour practice. The notice issued by them is clearly attracting item No. 6 of Fourth Schedule read with Section 9A. Item 6 reads as follows:

6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders

7. But, however it must be noted that the said item is attracted only when there is no application of standing order. It is the clear stand of the first Respondent that Clause 7 of the certified standing order enables them to re-arrange the shifts.

8. Mr. C.K. Chandrasekar, learned Counsel for the Petitioner contended that inasmuch as there is infraction of Section 9A, the writ petition must be admitted and the interim relief should be granted. In this context, he placed reliance upon a division bench judgment of this Court in *Arasu Viraivu Pokkuvarathu Oozhiyar Sangam v. State Express Transport Corporation Ltd and Ors.* reported in 2006 (3) LLJ 245, wherein the division bench held that if there is infraction of Section 33(1), the action of the employer will be invalid and the court can entertain the writ petition under Article 226 of the Constitution of India and can grant the relief. It must be noted that in that case, the court found that by the impugned action, the workers who were working as data entry operators were reverted to their original post without seeking permission from the conciliation officer which was admitted to be pending and therefore, the relief was granted. But in the present case, there is no finding that the Respondents had violated Section 9A of the ID Act. On the contrary, their defense was that the standing order permits re-arranging the shift.

9. The learned Counsel for the Petitioner also referred to an unreported judgment of this Court in W.P. No. 16439 of 1995, dated 18.07.2002 in *Lakshmi Vilas Bank Employees Union v. The Presiding Officer, Industrial Tribunal, Madras and another.* That case arose out of the Award passed by the Industrial Tribunal and that the Award passed by the industrial tribunal was set aside by this Court on the ground that withdrawal of key allowances is part of the service conditions of employees. Therefore, any withdrawal without giving 21 days clear notice u/s 9A will be invalid. In that case, there was a finding and further the case arose out of the dispute adjudicated by the industrial tribunal and not in the writ petition directly seeking for the relief.

10. Further, the learned Counsel placed reliance upon a judgment of this Court in W.P. No. 2047 of 2007, dated 7.3.2007 in *Indian Oil Corporation v. Assistant Labour Commissioner (Central) and others.* In that case, the writ petition was to forbear the Respondents from reducing the staff strength of contract labourers contrary to the terms of settlement signed u/s 12(3). Therefore, this Court held that since the provisions of Section 33(1)(a) were squarely attracted in view of the conciliation pending before the conciliation officer, the court had granted the relief.

11. In the present case, the facts are in dispute. Further, what was the interim

relief claimed by the Petitioner union when it was claimed as main relief by an trade union, this Court had dismissed the writ petition on the ground of effective alternative remedy by way of industrial adjudication. Therefore, the Petitioner cannot achieve what was denied to another trade union by this Court. Further, when they have also moved the conciliation officer and the advice given by the conciliation officer was not accepted by the first Respondent and that the first Respondent had also given a written objection, the best course open to the conciliation officer is to record a failure of conciliation and send a report to the Government of India at the earliest. So that, the Petitioner can have the benefit of the industrial adjudication on the issue raised by them which is pending before the second Respondent.

12. In this context, it is necessary to refer to a judgment of the Supreme Court in Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union, . The following passage found in paragraph 11 may be usefully reproduced below:

11. In Hindustan Lever Ltd. v. Ram Mohan Ray⁶, it was observed, inter alia, as follows: (SCC p. 148, para 12)

12. It is hardly necessary to refer to the various decisions which were cited before us as to what would constitute conditions of service the change of which would require notice u/s 9-A of the Act. In Dharangadhara Chemical Works Ltd. v. Kanju Kalu⁷, the Labour Appellate Tribunal of India held that the increase in the weight of bags to be carried from 1 cwt to 1-1/2 cwt was a change in the workload and the company was bound to pay wages as the workmen were willing to work but did not work on account of the unreasonable attitude adopted by the management. In Chandramalai Estate v. Workmen⁸, the payment of Cumbly allowance was held to have become a condition of service. In Graham Trading Co. (India) Ltd. v. Workmen⁹, it was held that the workmen were not entitled to Puja bonus as an implied term of employment. In Workmen of Hindustan Shipyard (P) Ltd. v. Industrial Tribunal¹⁰, in the matter of withdrawal of concession of coming late by half an hour (than the usual hour), it was held that the finding of the Industrial Tribunal that Section 9-A did not apply to the case did not call for interference. But the decision proceeded on the basis that the court will not interfere in its jurisdiction unless there was any manifest injustice. In McLeod & Co. Ltd. v. Workmen¹¹, the provision for tiffin was held to be an amenity to which the employees were entitled, and the provision of cash allowance in lieu of free tiffin directed to be made by the Industrial Tribunal could not be considered to be erroneous in law. In Indian Overseas Bank Ltd. v. Workmen¹², "key allowance" was treated as a term and condition of service. In Indian Oxygen Ltd. v. Udaynath Singh¹³, withdrawal by the management of the supply of one empty drum at a time at reasonable intervals was held not to contravene Sections 9-A and 33. In Oil & Natural Gas Commission v. Workmen¹⁴, where there was nothing to show that it was a condition of service that a workman should work for 6-1/2 hours only, no notice of change was held

to be required u/s 9-A for fixing the hours of work at eight. In *Tata Iron & Steel Co. Ltd. v. Workmen*¹⁵, change in weekly days of rest from Sunday to some other day was held to require notice. A close scrutiny of the various decisions would show that whether any particular practice or allowance or concession had become a condition of service would always depend upon the facts and circumstances of each case and no rule applicable to all cases could be culled out from these decisions.

(Underlined* for emphasis)

13. In the light of the above, there is no case made out by the Petitioner. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.