

(1980) 12 MAD CK 0047
In the Madras High Court

C.R. Ramaswami

APPELLANT

Vs

Needle industries (I) Ltd. and Another

RESPONDENT

Date of Decision : 17-12-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A

Tamil Nadu Shops and Establishments Act, 1947 — Section 4(2), 41, 41(1), 41(2)

Citation : (1981) 1 MLJ 448

Hon'ble Judges : M.M. Ismail, C.J

Bench : Single Bench

Judgement

M.M. Ismail, C.J.—This is an appeal against the order of Mohan, J. dated 28th October, 1980 allowing W. P. No. 5141 of 1980, filed by the first respondent herein. For the purpose of understanding the prayer in the writ petition, it is necessary to refer to only a few facts. Admittedly, the appellant herein was the employee of the first respondent. On 12th January, 1979, he wrote a letter addressed to the Secretary of the first respondent as follows-

I shall be thankful if you will kindly relieve me from services from 12th January, 1979. This may be treated as a formal letter of resignation from me.

On 12th January, 1979, itself the first respondent wrote the following letter addressed to the appellant-

We are in receipt of your letter of today's date tendering your resignation from the services of our company. Your resignation has been accepted and in view of your special request we are pleased to enclose herewith cash of Rs. 2,960 representing two month's salary for notice period.

Thereafter, the accounts of the appellant were settled. However, on 20th January, 1979, the appellant wrote to the first respondent herein stating that the letter of resignation, dated 12th January, 1979, was obtained from him by coercion and threat. Then the appellant purported to file an appeal before the second respondent herein u/s 4(2) of the Tamil Nadu Shops and Establishments Act,

1947. At that stage, the first respondent herein filed the present writ petition praying for the issue of a writ of prohibition prohibiting the second respondent from proceeding further with the hearing of the appeal or incidental matter filed by the appellant herein u/s 41 of the Tamil Nadu Shops and Establishments Act, 1947. The case of the first respondent was that on the facts of this case, the second respondent had no jurisdiction to entertain the appeal purported to have been filed by the appellant herein and deal with the same. Mohan, J., allowed the writ petition holding that the second respondent had no jurisdiction to entertain the appeal purported to have been preferred by the appellant herein and deal with the same. It is against this order of Mohan, J., the present writ appeal has been preferred.

2. Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 reads as follows: -

Notice of dismissal.-- (1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice provided, however, that such persons are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose:

(2) The person employed shall have a right of appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held of the employer.

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed.

Thus, merely from a reading of the section it is clear that Sub-section (1) contemplates an employer dispensing with the services of a person employed, and Sub-section (2) contemplates the said person employed after such dispensing with his services preferring an appeal before the second respondent herein on the ground that there was no reasonable cause for dispensing with his services on the ground that he had not been guilty of misconduct as held by the employer. Consequently, before Section 41(1) can be invoked the employer must have dispensed with the services of the person employed and Sub-section (2) merely follows Sub-section (1) and consequently, any appeal that may be preferred under Sub-section (2) must be based upon the employer dispensing with the services of the person employed, and there, being no reasonable cause for such action or the employee not being guilty of misconduct as held by the employer. In the present case as we have pointed out already, the appellant herein was relieved from his post in the service of the first respondent not on the basis of any initiative taken by the first respondent to dispense with the services of the appellant, but at the request of the appellant himself who tendered his resignation on 12th January, 1980. The contention is that even though the

resignation letter was admittedly submitted by the appellant herein and pursuant to that letter he was relieved from the services on that date itself, still, in view of the stand taken by the appellant herein that the letter was obtained from him by coercion and threat, it will amount to the employer dispensing with the services of the appellant and consequently, the Appellate Authority, namely, the second respondent has jurisdiction to go into that question in the appeal preferred by the appellant herein. We are unable to accept the contention. The second respondent is a creature of the statute and any power which he can exercise has to be traced to the statutory provisions which had created him and conferred powers on him. We have already indicated that having regard to the language of Sections 41(1) and 41(2) there must be first an action on the part of the employer dispensing with the services of an employee and if that action is absent, there is no question of a person like the appellant filing an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, in fact, the foundation for invoking the jurisdiction of the second respondent u/s 41(2) is the fact that the first respondent has dispensed with the services of the appellant. When the appellant sent his resignation letter, he requested the first respondent to relieve him on that date itself and the first respondent accepted the resignation letter and relieved him from his duties. Certainly, that will not constitute the employer, normally the first respondent herein, dispensing with the services of the employee, namely, the appellant herein.

3. However, strong reliance was placed before the learned Judge as well as before us on a decision of one of us reported in the *Lakshmi Vilas Bank Ltd. v. Pattabhi Chettiar* (1980) 2 LLJ 211. In that case, the question that arose for consideration was when an employee had been retired from service on the basis that he had attained the age of superannuation, whether the Appellate Authority u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, had jurisdiction to entertain any appeal by the retired employee. In that context, after referring to the statutory provision and the obligation imposed upon the employer to dispense with the services of an employee only for a reasonable cause after holding an enquiry into the misconduct of the person employed, the judgment pointed out:

It may happen in a particular case, the retirement was used by the employer as a cloak for dispensing with the services of an employee where the motive for dispensing with the services was something different. In that event, a different position may possibly result because no person will be allowed to evade the obligation imposed on him by law by having recourse to a cloak or guise under which he can take refuge in order to escape from such an obligation.

We are of the opinion that the above observation has no bearing on the point that arises for consideration in this particular case, Even in that case the initiative came from the employer by retiring the employee and it was not concerned with the present case of resignation by the employee himself, In such a context, we are of the opinion that the said decision is not of any assistance

whatever to the appellant herein.

Another decision, on which reliance was placed before the learned Judge as well as before us, is *Southern Roadways Ltd. v. Padmanabhan* (1979) Lab IC 234: 53 FJR 190. That case was concerned with the jurisdiction of the Government to refer a dispute to the Labour Court u/s 2-A of the Industrial Disputes Act, 1947. The said section reads as follows:

2-A. Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman any, dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

4. The question that came to be considered by the Karnataka High Court in that case was whether the expression "otherwise terminates the services of an individual workman" occurring in Section 2-A will take in a case where an employee contends that his resignation was obtained by force. The Karnataka High Court held that the expression "otherwise terminates the services of an individual workman" was wide enough to take in such a case. The learned Judge, Mohan, J., expressed his disagreement with that view, but at the same time pointed out--

Nonetheless, it is not for me to examine whether some other interpretation on the language of Section 2-A of the Industrial Disputes Act is permissible, because no such language occurs in Section 41 of the present Act (Tamil Nadu Shops and Establishments Act, 1947)-

We are of the opinion that Section 2-A of the Industrial Disputes Act, having regard to the language in which it was couched and the context in which it was enacted, cannot be of any assistance whatever to the appellant in the present case. Here, we are considering only one question, namely, whether the expression "employer shall dispense with the services of a person employed" will take in the case of an employer relieving an employee on the basis of the letter of resignation submitted by him, if he subsequently contends that the letter of resignation was obtained from him under coercion or threat. We are of the opinion that having regard to the language of Sub-section (1) and (2) of Section 41, the said section cannot comprehend such a case.

5. Lastly, the learned Judge has pointed out-

There is some force in the contention of Mr. Govind Swaminathan, that if jurisdiction were to be denied to the appellate authority in this cast, frequent resort to this questionable method will be had by the employers and thereby deprive the employee of the benefit of the social welfare legislative measures. But it is a matter in which the Legislature must bestow its urgent attention and it is worthwhile to remember that Courts are to interpret law on the plain language

of the statute not to legislate.

Though we agree with this observation of the learned Judge, we may also point out that the moment it is held that Section 41(2) of the Shops and Establishments Act, 1947, does not apply to a particular case, the employee is not without any remedy and the remedy in a civil Court is always open to him. Under these circumstances, the appeal fails and is dismissed.