

(2000) 05 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No. 20340 of 1992 and connected W.M.P.

Devanath R.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 18-05-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 3 LLJ 54

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for

a writ of certiorarified mandamus after calling for all the records relating to the award dated October 14, 1991 in I.D. No. 128 of 1987 on the file

of the Labour Court, Coimbatore, and to set aside the same and consequently to direct the second respondent to reinstate the petitioner with all

consequential benefits.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him

to file the present writ petition and requested this Court to allow the writ petition prayed for per contra, though no counter-affidavit has been filed

on behalf of the second respondent, the learned counsel; appearing for the second respondent argued the matter and justified the award passed by

the first respondent and requested this Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned counsel appearing for the respective parties. I have perused the contents of the affidavit together

with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various

points raised by the learned counsel appearing for the respective parties during the course of their argument.

4. In the above facts and circumstances of the case, the only point that arises for consideration is, as to whether there are any valid grounds to

allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows:

In this writ petition, the writ-petitioner herein challenges the award of the Labour Court, first respondent herein, dated August 14, 1991, in I.D.

No. 128 of 1987 dismissing, the dispute raised by him. The said dispute was raised by him questioning the illegal action of the Madras Aluminium,

Company, Ltd., the second respondent herein on March 28, 1985. It is the case of the petitioner herein that he was in the service of the second

respondent for 22 years at the time of his non-employment. In 1963 he was appointed as Assistant Electrical Engineer, his work was purely

technical and he was paid Rs. 325 per month and he was a workman. He had no supervisory or managerial powers. Thereafter he rose to the

position of mechanical and factory administrator. He functioned as a Manager for some time. But at the time of termination of his services by order,

dated July 14, 1984, he was redesignated as Manager-Special Assignment. Though the designation for the post was Manager-Special Assignment

the nature of work as not supervisory or managerial. He was stripped of all managerial and supervisory functions. He was assigned to do purely

electrical work. He was asked to translate Italian clerical documents. In other words he had been very subtly reverted to workman category.

While he was so working, on March 28, 1985 without any prior notice his services were terminated vide order CE/10/00/85, dated March 28,

1985, with a month's notice pay. It is his case that since on his reversion he was asked to do clerical work. He was a workman at the relevant

time and he raised an industrial dispute challenging his non-employment. The matter was referred for adjudication as I.D.No. 128 of 1987. The

first respondent examined the matter and passed the impugned award herein on August 14, 1991. The first respondent after examining witnesses and documents and hearing arguments has found that the termination of his service is not justified. However, he has concluded based on his designation without reference to the actual nature of work he was assigned and was carrying out at the time of his termination and the first respondent has misguided himself by referring to the nature he was doing prior to his reversion and has come to the wrong conclusion that he was not a workman as defined by the Industrial Disputes Act, 1947, and that therefore he was not entitled to any relief in I.D. No. 128 of 1987. This conclusion is erroneous and ought to be set aside. As he has no other effective alternative remedy except to approach this Court, he has come forward with the present writ petition.

6. Challenging the impugned award it is contended by the petitioner that on the date of his termination, he was very much a workman, for he was not performing any managerial functions, was asked to translate some Italian documents though he was designated as Manager-Special Assignment. He functioned as a translator which was purely clerical in nature. Since there was ample evidence to demonstrate that the second respondent management had unilaterally and arbitrarily terminated his services the first respondent ought to have set aside the termination. It is also contended by the petitioner herein that the first respondent failed to see the injustice that has been done by the second respondent in termination his services after 22 years of blemishless service. The second respondent has dispensed with his services without assigning any reasons whatsoever.

Neither an enquiry was held nor was notice, given. The action of the second respondent is discriminatory and mala fide. It is contended by the petitioner that his termination amounts to retrenchment and the second respondent ought to have paid the retrenchment compensation and failure to pay compensation renders the termination invalid as laid down by the Supreme Court in *N. Sundaramony v. State Bank of India* (sic) 1976 (2)

L.L.N. 5. Further according to him, in any case the termination of services amounts to punishment. Inasmuch as no opportunity has been given to defend himself the order is vitiated for violation of principles of natural justice. It is also his grievance that he has been out of employment and have

been put through untold hardship for no fault of him.

7. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims and counter claims

made by the parties, the following are the admitted facts. He was in the service of the second respondent for 22 years at the time of his non-

employment. In 1963 he was appointed as Assistant Electrical Engineer, his work was purely technical and he was paid Rs. 325 per month and he

was a workman and he had no supervisory or managerial powers. Thereafter he rose to the position of mechanical and factory administrator. At

the same time he is not denying that he was functioning as a Manager for some time. But at the time of termination of his services by order, dated

July 14, 1984, he was redesignated as Manager-Special Assignment. But it is his case that though the designation for the post was Manager-

Special Assignment, the nature of work was not supervisory or managerial. He was stripped of all managerial and supervisory functions. He was

assigned to do purely clerical work. According to him he was asked to translate Italian documents. Thus it is his contention that he had been very

subtly reverted to workman category and while he was so working, on March 28, 1985 without any prior notice his services were terminated vide

order CE/10/.85, dated March 28, 1985, with a month's notice pay. He raised an industrial dispute in ID. No. 128 of 1987 and the first

respondent examined the matter and passed the impugned award herein on August 14, 1991. In the said award, he has come to the wrong

conclusion that he was not a workman as defined by the Industrial Disputes Act 1947, and that therefore he was not entitled to any relief in I.D.

No. 128 of 1987. It is his strong contention that on the date of his termination he was very much a workman and that he was not performing any

managerial functions and he was asked to translate some Italian documents though he was designated as Manager-Special Assignment and that he

functioned as a translator which was purely clerical in nature. It is also his case that the termination amounts to retrenchment and the second

respondent ought to have paid the retrenchment compensation and that therefore the failure to pay compensation renders the termination invalid

and also that as no opportunity has been given to defend himself the order is vitiated for violation of principles of natural justice.

8. Coming to the impugned award which is passed by the first respondent, it is a speaking order running about 18 pages. Before rendering such an award the first respondent has examined totally three witnesses and 45 documents. Thus it is a contested order also. It is significant to note that in the impugned award the first respondent has taken into consideration all the aspects of the case and has recorded his finding after analysing all the issues involved in this case, it is significant to note that in this case it is admitted even by the petitioner herein that he was functioning as a Manager for some time and even at the time of termination his designation was only "Manager Special Assignment." However it is his case that though the designation for the post was Manager-Special Assignment, the nature of work was not supervisory or managerial and he was stripped of all managerial and supervisory functions and he was assigned to do purely clerical work. In the impugned award it has been observed by the first respondent that in a number of documents produced before him the petitioner herein has accepted that he has dismissed several workers. He has also accepted that he has transferred several workers. Therefore he opined that it is very clear that that the petitioner had been a Manager for several years continuously. The petitioner claims, that the appointment as Manager-Special Assignment is only a reversion. But he has not disputed the same by giving any written representation. He simply stated that he objected the same orally. Further it is significant to note that he accepted the post and joined duty. Further in the impugned award it has been specifically observed by the first respondent that while the petitioner herein was working as a Manager, no fees was collected for the electricity use in his residence. But even after his new post no fees was collected from him for the electricity used in his residence. It has also been categorically observed by the first respondent in the impugned order that all along he has been signing only the exclusive attendance register kept for Managers only. That apart it has also been observed by the first respondent in the award that there had been no reduction in the pay and other allowances paid to the petitioner herein after the assignment of the new post which is alleged as reversion. Therefore, for all the above reasons, he came to the conclusion even at the time of his termination the petitioner was only functioning as Manager. Therefore all the aforesaid reasons only he came to the conclusion that he was not a workman as defined by the Industrial

Disputes Act and that therefore he was not entitled to any relief in I.D. No. 128 of 1987. Therefore in the above facts and circumstances of the

case I do not see any infirmity or illegality in the award impugned in this writ petition.

9. In support of the writ petition, the learned counsel appearing for the petitioner, relied on the following decisions in support of their case:

(1) 1995 (2) L.L.N. 574

(2) Esic, Bombay Vs. Vyankatesh Coop. Processors Society Ltd. and Another,

(3) 1991 (1) L.L.N 613

(4) 1984 (1)L.L.N. 1

(5) Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay,

However, no copies of such decisions were produced before this Court for perusal.

10. On behalf of respondent 2 also the following decision was relied on K.P. Subramaniam v. Ashok Leyland Ltd. 1998 (3) L.L.N. 657, wherein

it has been held that it is settled law that when the facts are clear and sufficient for arriving at a conclusion, there is no need to go for precedent.

The first respondent-management have proved their case by placing acceptable oral and documentary evidence and the second respondent

Labour Court of appreciation of such acceptable evidence, arrived at a proper conclusion that the petitioner is not a workman as defined u/s 2(s)

of the Industrial Disputes Act 1941. That being so the above observations are squarely apply to the facts of the present case also. Further in the

very same decision it has also been made clear that it is settled law that unless and until the finding of the Labour Court, Tribunal is found to be

perverse or contrary to the evidence or no evidence, it is not possible for the High Court to interfere lightly by exercising the extraordinary

jurisdiction under Article 226 of the Constitution of India. In such circumstances, as already observed in the present order, the first respondent

Labour Court herein has clearly come to the conclusion that all along the petitioner herein has been functioning only in a managerial capacity. That

being so, the above decision relied on by the learned counsel appearing for the second respondent squarely applied to the facts of the present

case.

11. Therefore, for all the aforesaid reasons and in the facts and circumstances of

the case and also in view of my above discussion with regard to the various aspects of this case and also in the light of the decisions referred to above. I am of the clear view that the petitioner herein has failed to make out any case in his favour and that therefore there is no need for any interference with the award impugned in this writ petition. Thus the writ petition fails and the same is liable to be dismissed for want of merits.

12. In the result, the writ petition is dismissed. No costs. Consequently Writ Miscellaneous Petition No. 29315 of 1992 also is dismissed.