
(1966) 09 MAD CK 0021
In the Madras High Court

Express Newspapers Ltd.

APPELLANT

Vs

Additional Commissioner for Workmen's Compensation and
Another

RESPONDENT

Date of Decision : 05-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) 2 LLJ 896

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

Venkatadri, J.—The management of Express Newspapers, Ltd., have filed this petition under Article 226 of the Constitution of India to

quash the order of the Additional Commissioner for Workmen's Compensation, Madras (respondent 1), dated 24 May 1963, setting aside the

order of termination of the services of M. Neelakantan (respondent 2) passed by the management on 7 December 1962.

2. The facts leading to this petition lie in a narrow compass. In 1959, there was a strike in the Madras office of the newspaper. Thereupon, the

management declared a closure of their business, and also paid the staff their dues up to that date. Respondent 2 who was an employee of the

newspaper office was one among them. Sometime thereafter, respondent 2 volunteered his Services and the management then entertained him as a

temporary employee to assist the skeleton staff-which was then functioning. According to the affidavit filed in support of the writ petition,

respondent 2 was continued in various departments of the office to assist the staff in collecting the out standings due to the newspaper office and

that when the management had to effect a reorganization even in respect of the

skeleton staff, they had to retrench respondent 2 from Service as he happened to be the junior most among the temporary staff. Of course, it is In the records that the management were not satisfied with the work and conduct of respondent 2. On termination, respondent 2 was paid one month's salary in lieu of notice, besides the retrenchment compensation he was entitled to under the law. Thereupon, respondent 2 filed an appeal before the Additional Commissioner for Workmen's Compensation u/s 41 (2) of the Madras Shops and Establishments Act, The Commissioner set aside the order of termination of respondent 2 by the petitioner, as he was of the view that the services of respondent 2 were not terminated for a reasonable cause. While setting aside the order of termination, the Commissioner observed that the various allegations of misconduct made against respondent 2 would show that the actual reason behind the termination was certain alleged misconduct and not that he was being found surplus to the requirement. It is this order of the Commissioner that Is attacked by the management in this writ petition.

3. The only Question for consideration in this writ petition, therefore, is whether the termination of the services of respondent 2 was termination simpliciter or dismissal under cloak of discharge simpliciter.

4. Before deciding that point, It is pertinent to note the observations of Rajamannar, C.J., in Indian Metal and Metallurgical Corporation v.

Industrial Tribunal, Madras 1952 1 L.L.J. 364 :

If a citizen has got a right to carry on business, we think it follows that he must be at liberty not to carry it on If he so chooses. A person can no

more be compelled to carry on a business than a person can be compelled to acquire property.... Sri Bashyam was really unable to convince us

how any one can be compelled to carry on a business against his will and yet be said to enjoy a right to carry on a business.

In the present case, there was strike followed by a closure and the management were maintaining a skeleton staff to collect the outstandings and to

look after the pending matters. The employee who volunteered his services was taken on a temporary basis. There is no doubt the fact that the

management were not pleased with his work and conduct. They transferred him from one section to another, and finally when he was found a

surplus he was discharged. Certainly, the management cannot be compelled to

retain or maintain an employee, when that person is not useful to the management. Retrenchment is termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. It means, as observed by their lordships of the Supreme Court in *Hari-prasad v. Divelkar* 1957 I L.L.J. 243, the discharge of surplus labour or staff by the employer for any reasons whatsoever otherwise than as a punishment inflicted by way of disciplinary action and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business. In *D. Macro-polio & Co. (Private), Ltd. v. their employees' union and Ors.* 1958 11 L.L.J. 492, their lordships of the Supreme Court had to consider a case of retrenchment consequent upon reorganization of business for reasons of economy. They have observed that if reorganized scheme has been adopted by the employer for reasons of economy and convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the reorganization scheme was adopted by the employer bona fide or not and that the resulting discharge and retrenchment would have to be considered as an inevitable, though very unfortunate, consequence of the reorganized scheme, which the employer, acting bona fide was entitled to adopt. In the case cited also, the respondents contended that there was victimization and unfair labour practice. In *Tata Oil Mills Co. Ltd. v. their workmen* (vide p. 602 supra), the Co. lost their confidence in a particular salesman and therefore terminated his services. The company contended that the termination was discharge simpliciter but the workman contended that it amounted to dismissal. Their lordships observed that where an order of discharge made by an employer gave rise to an industrial dispute, the form of the order by which the workman's services were terminated would not be decisive and industrial court would be entitled to examine the substance of the matter and decide whether the termination was in fact discharge simpliciter or whether it amounted to dismissal which had put on the cloak of a discharge simpliciter, and that if the industrial court was satisfied that the order of discharge was punitive, that it was mala fide, or that it amounted to victimization or unfair labour

practice, it was competent to the industrial court to set aside the order and in a proper case direct reinstatement of the workman, and that the test

always was whether the Act of the employer was bona fide or not.

5. In the Instant case, the Commissioner, after referring to the counter-statement of the management, wherein they had mentioned about the

unsatisfactory work and conduct of respondent 2, concluded that the petitioner did not establish by any evidence that respondent 2 was found to

be surplus to the requirements. From the records, it will be seen that the management had not only set out the record and conduct of respondent 2

but also the Service conditions of the employee. It Is common case that there was a general strike in the office of the newspaper. The strike was

followed by the closure of the establishment itself. Sometime thereafter, respondent 2 was taken in as a temporary employee to collect the

outstandings due to the office In the various departments. When the management wanted to effect a reorganization even in respect of the skeleton

staff and when respondent 2 was found to be a supernumerary to their requirements, they terminated his services as he happened to be the junior

most person. On these facts, I am unable to say that the order of discharge is punitive or that is mala fide. Respondent 2 has not established that he

was actually not a surplus and the retrenchment effected was a cloak to get rid of him. May be the management were not pleased with his work

and conduct. But in the face of patent facts, we cannot make an Inference as to the reason behind the termination, as has been done by the tribunal

below. In the instant case, I am satisfied that the termination was, In fact, discharge simpliciter.

6. In the result, the order of the Additional Commissioner for Workmen's Compensation dated 24 May 1963 setting aside the order of termination

of respondent 2 is hereby quashed. The petition is allowed; but, in the circumstances, without costs.