
(2002) 05 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 10034 of 1995

J.V.D. Durai, Managing Director, Samson Rubber Industries
Private Limited, 3, Sidco Estate, Ambattur, Madras

APPELLANT

Vs

The Presiding Officer, Second Additional Labour Court,
Madras and V. Balakumar, 8, Kanakavallipuram, Thiruvallur,
Chengai MGR District

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2002) 05 MAD CK 0004

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M.S. Krisnamachari and D. Vijayakumar, for the Appellant; K.M. Ramesh, for the Respondent

Judgement

1. The Management has filed this writ petition challenging the direction of the Presiding Officer, Labour Court for reinstatement of the second

respondent with full backwages.

2. Petitioner is a small scale industry manufacturing ""V"" Belt and ""Fan Belt"". The second respondent was working as Press Belt Operator in the

Press Section of the petitioner concern. The Workmen Union raised a charter of demands against the Management claiming increase in

wages, additional bonus and other benefits. The Management demurred to the demands and ultimately the matter was before the Conciliation

Officer. While the matter stood thus, the workers including the second respondent resorted to stay-in-strike from 23.2.1991 to 26.2.1991. It is

asserted that some of the workers including the second respondent resorted to unruly behaviour inside the factory premises and caused damages

to the machineries and other properties and threatened loyal workers forcing the Management to declare lock-out from 27.2.1991. When the

situation improved and when some workers came forward to resume work, the Management lifted the lock-out from 1.7.1991. A domestic

enquiry was held against the second respondent. The Management by a letter dated 12.11.1991 informed the second respondent that though the

charges have been proved against him, the Management found that suspension during enquiry was sufficient and directed the second respondent to

resume work, subject to signing an undertaking of good conduct. The workers including the second respondent were asked to give an undertaking

to the effect that they would not cause damages to the properties of the factory and prevent the co-workers from doing their duty and obey the

superiors in doing work and maintain peace in the industry. Except six workmen, all other workers after giving such an undertaking, resumed duty.

But, six workers, including the second respondent, refused to rejoin stating that they were not prepared to give the undertaking.

3. The second respondent raised an Industrial Dispute No.544 of 1992 alleging that the Management had denied him the employment and he had

stated that though he has agreed to obey the Standing Orders of the company, he is not willing to give the undertaking, but the Management did

not agree to the suggestion.

4. The Presiding Officer, Labour Court under the impugned award held that seeking undertaking of good conduct from the petitioner was unjust

and directed the Management to reinstate the second respondent with full backwages, continuity of service and other attendant benefits. This

award is being challenged by the Management.

5. At the time of entertaining the writ petition, an order of interim stay was granted subject to compliance of Section 17-B of the Industrial Disputes

Act. Subsequently, on the application filed by the petitioner to vacate the stay order, an order was passed making the interim order final subject to

the deposit of Rs.13,000/- before the Presiding Officer, which was permitted to be withdrawn by the second respondent.

6. The Presiding Officer, Labour Court relying upon the decision reported in A. Raman and another Vs. K.N. Vani and others, held that it was

justified on the part of the Management to insist upon an undertaking before

allowing the workers to resume duty.

7. A mere perusal of the award of the Labour Court indicates that the lower court has simply placed reliance on the decision of a single Judge of

Bombay High Court without analysing the facts and circumstances in the present case. The question as to whether such an undertaking is justified

would always depend upon the facts and circumstances of each case as observed by the subsequent Division Bench decision of the very same

Bombay High Court in Maharashtra General Kamgar Union, Bombay Vs. Solid Containers Ltd. and others, . Learned counsel appearing for the

petitioner has placed reliance on several decisions in support of his claim, as in the given case the Management has sought for an undertaking from

the workmen, submitted that in the present case the undertaking sought for by the Management was very innocuous in nature and refusal by the

second respondent was unjustified.

8. Since the Presiding Officer, Labour Court has not considered various facts and circumstances as appearing from oral and documentary

evidence adduced on the side of both the parties and merely relying upon the decision of the Bombay High Court decided the matter, in normal

course, I would have remanded the matter to the Labour Court for fresh determination. However, I find that adopting such a course at this distant

point of time may prolong agony for both sides as both sides would be facing continued litigation and it would be more appropriate to bring an

quietus to the lis by finally disposing the matter. The question is what would be a just and fair conclusion in the matter.

9. Intention under the Industrial Disputes Act is to maintain industrial harmony which is ultimately beneficial to the Management as well as

workmen. Having considered the submissions made by the learned counsels for the parties and having regard to the facts and circumstances of the

case, I think interest of justice would be served by giving the following directions :-

(1) The second respondent should be reinstated in service within a period of two months from the date of communication of this Order;

(2) For the period subsequent to filing of the writ petition, Management is required to comply with the provisions contained in Section 178-B of the

Industrial Disputes Act. Necessary calculation should be made and if any amount

has remained unpaid, the same should be paid within two months;

(3) So far as backwages are concerned, the Management is required to pay 25% of the backwages for the period from 21.12.1991 till the date of filing of the writ petition within the very same period.

(4) The second respondent is required to give an undertaking to the effect that he would not cause damages to the properties of the Management and would not carry on any unlawful activity. Such an undertaking should be given at the time of rejoining the duty.

10. The Writ Petition is disposed of subject to the aforesaid directions which would be operative in so far as the award passed by the Labour Court is concerned. No costs.