

(2003) 06 MAD CK 0124
In the Madras High Court
Case No : Writ Petition No. 17174 of 1995

Krishnan P.

APPELLANT

Vs

Management, Jonas Woodhead and Sons (India) Ltd. and
Another

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Citation : (2003) 3 LLJ 686

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : K.V. Dhanapalan, for the Appellant; T.S. Gopalan and S. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The petitioner challenges in this writ-petition the correctness of the order of the Labour Court passed in I.D. No. 666 of 1993, dated April 17, 1995, wherein the claim of the petitioner for reinstatement in the service with back-wages, continuity of service and other benefits have been rejected by the Labour Court.

2. There is no dispute that the petitioner was initially working in the factory of the first respondent and was transferred to its corporate office as "office boy" from April 1989. He was advised by letter, dated December 4, 1990 that he would be bound by the rules and regulations as applicable at corporate office from time to time. The petitioner applied for leave on the ground of sickness from April 22, 1991 to May 23, 1991. On May 27, 1991, he applied for leave for one day on May 28, 1991. His leave letter was submitted in the corporate office and the same was approved by the approving authority at the corporate office. Thereafter, the petitioner, remained absent. On July 3, 1991, a letter was sent to the petitioner pointing out his unauthorised absence and advising him to report for duty. Again on August 7, 1991, a further letter was sent informing the petitioner if he continued to remain absent, he would be deemed to have left the

service. There was no response from the petitioner. On August 27, 1991, a final reminder was sent stating that if the petitioner did not report for duty within 48 hours, he would be deemed to have left the service. Finally on September 13, 1991, the petitioner was informed that in view of his continuous absence without leave letter and without any information, he was treated as having left the service of the company with effect from May 28, 1991. The letter sent by registered post with acknowledgment due, was returned with an endorsement refused by the petitioner. Publication was made in "Daily Thanthi", dated September 22, 1991.

3. On April 24, 1991, the petitioner sent a lawyer's notice stating that during the material time, he was sick, that he had sent medical certificate, that there was no question of absence or sanction of leave, that he has informed the first respondent about his sickness and that despite his application, his service was terminated. In the lawyer's notice it also stated that he was fit to resume duty on June 12, 1991, since the company was under lockout, he could not resume duty. It was also stated that he came to know about the termination only after seeing the publication in the newspaper. On February 22, 1993, the petitioner raised an industrial dispute challenging the order of termination of employment. On failure of conciliation, the petitioner carried on the dispute to the second respondent Labour Court in I.D. No. 666 of 1993. On a consideration of the materials placed before the second respondent, the second respondent passed the award holding that the petitioner had last attended duty on May 27, 1991, that he admittedly did not go to work between May 28, 1991 and June 11, 1991 and the petitioner was not entitled to any relief. The correctness of the order of the Labour Court now put in issue in the present writ petition.

4. The learned counsel appearing for the petitioner has vehemently contended that there is total violation of the principles of natural justice in passing an order of termination. There is absolutely no notice or enquiry whatsoever conducted by the first respondent, which vitiates the entire proceedings. Even on merits, the learned counsel contended that there is no question of unauthorised absence during that period as due medical certificate has been sent by the petitioner. Hence, the conclusion of the Labour Court that the petitioner absented himself is not correct and not based on any materials.

5. On the other hand, the learned counsel appearing for the first respondent has submitted that by sending letters, the petitioner was informed that unless or otherwise he attends the work, he would be deemed to have left the service. For those letters, there was no response. The letters were received and one such letter was returned back as refused. The petitioner himself has admitted in his cross-examination that the address mentioned in the letters were correct and the letters sent were not received by him. When such being the position, i.e., the petitioner has been put on notice about the non-joining of duty by him, there is no necessity for conducting an enquiry. For this aspect, the learned counsel relied on a decision in the case of *Syndicate Bank Vs. The General Secretary, Syndicate*

Bank Stff Association and Another, .

6. The learned counsel appearing for the petitioner has lastly contended that admittedly the petitioner did not attend the work between May 28, 1991 and June 11, 1991. According to the petitioner, he went to the factory on June 12, 1991 and the factory was under lockout and hence, he could not join duty. Then he went to the administrative office in the 3rd week of June 1991 and at the administrative office, he was told that there was no work in the office and he need not report for work any more. Then, after seeing the publication in the newspaper, he caused lawyer's notice, dated April 24, 1992.

7. In cross-examination, the petitioner has admitted that the address mentioned in Exhibits M23 and M24 was correct, that the letters sent under Exhibit M23 were not received by him, that the covers were opened and the four letters were marked as Exhibit M29 series, that the final letter, dated September 13, 1991 and Exhibit M24 was said to be not received by the petitioner and on opening the cover the letter was marked as Exhibit M30. Admittedly, the petitioner has not reported for duty after May 28, 1991. He had not sent any leave application or medical certificate, that only after a long lapse of time, in February 1993 he raised the dispute. The Labour Court found that it was the petitioner, who was responsible for the cessation of the employment and the first respondent was not responsible for the non-employment. Hence, on merits, the petitioner has not made out any case to interfere with the award passed by the Labour Court.

8. Even with regard to the contention that non-conducting of enquiry would vitiate the whole proceedings, I am of the view that this contention has also been correctly rejected, by the Labour Court. Because, the letters sent by the first respondent- management, which have been marked as documents, would make it clear that the petitioner was required to join duty, failing which he would be deemed to have been terminated from service. For those letters, there was no response from the petitioner and the letters were returned with an endorsement "refused."

9. In such a situation, in the case of Ammapet Handloom Weavers' Co-operative Production and Sales Society, Ltd. Vs. Kadalaimuthu (K.S.) and Others, this Court has held that it is not incumbent on the employer to wait indefinitely for the employee to turn up. The society (in that case) is under no obligation to wait indefinitely and were acting within their rights in removing the employees' names from the list of employees.

10. With regard to the contention that has been raised by the learned counsel for the petitioner, that non-conducting of enquiry would vitiate the order of termination, the Apex Court in the case of Syndicate Bank v. General Secretary, Syndicate Bank Staff Association (supra), in which facts are identical to the facts of the present case negated such a contention. It is pertinent to refer the relevant portion, at p. 1639 of Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another,

"14. In the present case action was taken by the bank under Clause 16 of the Bipartite Settlement. It is not disputed that Dayananda absented himself from the work for a period of 90 or more consecutive days. It was thereafter that the bank served a notice on him calling upon to report for duty within 30 days of the notice stating therein the grounds for the bank to come to the conclusion that Dayananda had no intention of joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period, bank passed orders that Dayananda had voluntarily retired from the service of the bank."

11. In view of the settled principles of law as laid down, I am of the view that the petitioner has not made out any case to interfere with the order of the Labour Court. Hence, there is no merit in this writ petition and the same is dismissed. However, there is no order as to costs.