
(1967) 03 MAD CK 0078
In the Madras High Court

Madurai General Workers' Union (by secretary) APPELLANT
Vs
Brinda Textiles Handloom Factory (by sole proprietor) and RESPONDENT
Others

Date of Decision : 24-03-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 2

Citation : (1968) 2 LLJ 101

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—The petitioner in this writ petition in the secretary, Madurai General Workers" Union, Madurai. Respondent 1 in the management of Brinda Textiles Handloom Factory. Madurai, and respondent 2 is the presiding officer, labour const. Madurai. After the petition was filed, one P.R. Krishnamurthi, who was the sole proprietor of respondent 1, died, and bin legal representative, namely, his widow and children, were brought on record an respondents 3 to 7, in the writ petition.

2. On the initiative taken by the petitioner-union, the Government of Madras referred to the labour court. Madurai, for adjudication the questions, whether the non-employment of eighteen workers (whose names were appended) was justified and to what relief each was entitled and to compute the relief, if any, awarded in terms of money, if it could be so computed.

3. A brief reference to the facts that preceded the above reference can now toe made. The eighteen workers according to the management, went on strike on 14 December 1961. The management on that day repeatedly issued notions to the workers to resume work, but, since they refused, the management declared a lookout at 7 p.m. This state of affairs continued four about a week. Then on the intervention of the conciliation officer, the lookout was lifted with effect from 2 December 1961. At the same time, the management treated the case of seven of the workers in a category different from the case of the remaining eleven

workers. According to them, even after the lifting of the lookout. the seven workers who were the cause of the trouble would be proceeded against by issuing show-cause notices, but they were prepared to take back the remaining eleven workers.

4. What happened thereafter was that the management dismissed the seven workers from service. But the eleven workers, against whom the management did not propose to take any action, did not report for duty event though the management was prepared to take them back for duty. The management, apparently, also contended at the time of the enquiry before the labour court, as they did before me, that all the eighteen workers were not really workmen as defined in the Act, but were only engaged on a contract basis for doing specified work for which they were paid at certain rates according to the outtum of work and the quality.

5. Taking the above specific pleas raised before it, the labour court framed the following issues:

(1) Are the eighteen persons in the reference workmen ?

(2) Did eleven workers not resume work inspite of the respondents' notice to resume work?

(3) In the dismissal of the other seven workers justified?

(4) To what reliefs are the sixteen persons entitled ?

6. The labour court found, after considering the evidence adduced before it, that all the eighteen persons were not workmen within the definition of the Act. In regard to the second issue, it found that the eleven workers in spite of the management's notice voluntarily stayed away from work. In regard to the third issue, the labour court found that the management had not produced any chargesheet or any show-cause notice given to the seven workers specifying the charges. Even in the questions put to them, charges were not stated in any specific form and the workers were thus placed at a very great handicap. In view of the above considerations the labour court found that the dis-missal of the seven workers was not at all justified.

7. However, relying on the finding on the first issue that the workers were not work-men as defined in Section 2(s) of the Industrial Dispute Act, the labour court was of the opinion that none of the workers in the case was entitled to any relief and passed an award accordingly.

8. Against the above decision of the labour court, the petitioner-union has filed the present writ petition for quashing the order of the labour court by a writ of certiorari.

9. Learned Counsel, appearing for the petitioner, urges that the question whether the eighteen persons mentioned in the reference of the Government were workmen as defined in Section 2(a) of the Industrial Dispute Act, involves a

decision on jurisdictional issue and that this Court, in exercise of its writ jurisdiction, can reexamine the finding of the labour court on this issue on the merits and arrive at an independent conclusion. This position is well-recognized by authorities and it is not necessary to cite them in this order. The respondent's learned Counsel also is not in a position to dispute this broad legal proposition.

10. Taking up too evidence adduced in this case, it appears that the nature of the business conducted by respondent 1 involves working by a number of weavers on looms which respondent 1 has located in his factory. An attendance register is maintained which purports to be a muster-roll prescribed under Rule 103 of the Madras Factories Rules, 1950. The names of the workers in the weaving section are entered in this register and their daily attendance is noted. Now and then; some workers have been noted as having left the service. There is a separate page for clerks, and for workers engaged in the warp section. The maintenance of such a register is a strong piece of evidence to show that the management had been dealing with the workers now under consideration as workers regularly employed day by day. The maintenance of a regular attendance register with a provision for entering the names of those who had left the service of the management will indicate prima facie that the relationship between the workers and the management was one of a contract of service and not a contract for service.

11. W W. 1 for the union deposed that he had been working in the concern for six years and that he was getting on an average Rs. 2 to Rs. 2,50 per day, or Rs. 60 to Rs. 70 per month. The workers used to go to work at 8 a.m. They have a lunch interval between 12 noon and 1 p.m. and then they work from 1 to 5 p.m. If a worker comes half an hour late, he would not be provided with work and if his work is refused, he would not get any wages for the day. W.W. 2 stated that wages need to be paid according to the number of articles woven. There is no stipulation as to the number of pieces to be woven, A weaves can weave any number of pieces a day. The management prepares the warp and supplies it to the workers, but no wages will be paid on the days when the warp preparation goes on and there is no work for the weavers. W.W. 3 stated that the wages would be paid according to the quality of the cloth woven and she used to weave ten cloths of special variety and twenty cloths of the bazar variety. Every day the workers used to sign in the acquittance register for the receipt of wages.

12. The management examined the head clerk as M.W. 2. He filed the registrar, Ex. M 26, the muster-roll for the period 1 November 1960 to 30 June 1961. He deposed that the weekly holiday for Brinda Textiles was on Sunday. M.W. 1, a worker in the textiles, stated that it was his duty to open the factory, but that there was no fixed time to close the factory.

13. It will be clear from the above evidence that the workers are paid on piecework basis, but there is regularity of attendance; they have got to work on specified warps supplied by the management. They have got freedom to weave as many pieces as they like, but the pieces of cloth they weave are restricted to

two qualities, bazar variety and special variety. They are given wages according to the number of places woven by them and the quality. Fixed hours of work are allotted to them. They have got lunch interval. When they come late beyond a certain hour, they are not given any work. There is a weekly holiday and a muster-roll is maintained. There is a record of workers being removed from service from time to time. There are also a head clerk and an accountant, who, in all probability, have to work in the premises of the factory itself.

14. Learned Counsel appearing for the management stressed that there is no evidence to show that the management exercised any control or supervision over the workmen in the factory and that such control or supervision would be one of the (sic) tests for determining whether the workers are workmen or merely contractors. He referred to the observations of the Supreme Court in *D.C. Dewan Mohideen Sahib & Sons v. United Bidi Workers' Union* 1964 II L.L.J. 633 as well as *Birahichand Sharma v. First Civil Judge, Nagpur* 1961-II L.L.J. 86. The latter decision followed the Supreme Court decision in *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, which held that the definition of workman itself implied the relationship of master and servant or employer and employee and that it was not enough that a person was merely working in the premises belonging to another person. A distinction was drawn between a workman and an independent contractor. At p. 88 of the report it is observed:

Respondents 2 to 4 have to work at the factory and that in itself implies a certain amount of supervision by the management. Their attendance is noted and they cannot get the work done by others but must do it themselves. Even though they are not bound to work for the entire period during which the factory is open, it is not in dispute that if they come after midday they are not given any work and thus lose wages for that day, the payment being at piece-rates. Farther, though they can stay away without asking for leave, the management has the right to remove them if they so stay away for a continuous period of eight days. Lastly, there is some amount of supervision inasmuch as the management has the right of rejection of the biris prepared if they do not come up to the proper standard.

The decision goes on to observe that what is important in such cases is the right to supervise and not so much the manner in which it is exercised that is important for applying the definition in Section 2(s) of the Act.

15. In *D. C. Dewan Mohideen Sahib & Sons v. United Bidi Workers' Union* 1964 II L.L.J. 693 (vide supra) stress was laid upon the conduct of the manufacturer which showed that the employees were treated as workmen. In the present case it is significant that the management had throughout treated the workers as workmen with the right to frame charges against them for misconduct and remove them from service and note that fact in the attendance register regularly kept for their attendance. Even though there is no direct evidence that when the weavers were engaged at the loom someone on behalf of the management was constantly supervising the work, it will be implicit from the regularity of attendance and from the fact that the weavers were weaving pieces on the warps

supplied by the management and that the weavers were paid wages according to the quality of the cloth woven, that the management would have control in seeing that the warp supplied by them was not wasted or spoiled, but was put to proper use so that goods saleable in the market and of standard quality are woven out of the warp, I am of opinion that the circumstances clearly Justify the finding that the employees in this case are workman as defined in the Act. I, therefore, reverse the finding of the labour court on this point and hold that the labour court had jurisdiction to go into the question.

16. Regarding the second issue, the award of the labour court in Para. 8 of the order clearly shows that after intervention of the labour officer, the management offered to take back the eleven workers excluding the seven workers, against whom they were proceeding to take some action. The management also has given evidence to show that the eleven workers declined to accept the offer of employment. The eleven workers thus concerned seem to have claimed that they did not get any individual notice calling upon them to come back and report for work. On the other hand, the management gave evidence that as the address of the workers was not known, notices were firsts of all affixed at the factory gate. The management also felled on Exs. W. 9 to W. 10, notices sent by the management to these eleven workers later, on 11 January 1962, directing them to report for work. The evidence of the worker, W. W. 2, was that in reply to this notice the eleven workers went to work, that the management asked them to give letters of apology, but, since they refused to do so, they were not given work As against this, on 19 January 1962 the management seams to have sent a notion stating that it was untrue to say that they had instated upon an apology, before these eleven workers were allowed to work again. The question whether the management or the workers have given the right version on this aspect of the case must depend upon the appreciation of evidence. The finding of the labour court based upon the evidence is that the plea of the workers that they went for work and they were refused work was not acceptable and that the circumstances indicated that the eleven workers had voluntarily stayed away from work. This is a finding of fact and it is not possible for me in writ proceedings to interfere with that finding and decide that the plea of abandonment is not sustainable of established on the evidence. I, therefore, hold on this point that this is a case of abandonment of their work by the eleven workers and that they are not entitled to any relief.

17. However, on the third point it appears to me that the matter requires farther investigation. I have already mentioned the fact that after the filing of the writ petition the proprietor of the concern, one Krishnamurthi, died and his widow and children have been brought on record. They have also pleaded that the factory has ceased to exist on account of some reason or other. The reference made to the labour court by the Government will involve the determination in the case of the seven workers whether the management was justified in not employing them and to what relief the workers would be entitled. The labour court would also be required to compute the relief, if any, to be awarded in terms

of money, in the case of these seven workers. The question as to how far the legal representatives of the former manager would be liable to meet any claims which may arise at the instance of the seven workers by reason of their wrongful dismissal by the former manager will depend upon a variety of circumstances including questions of fact and of law. Since the factory is non-existent, there can be no question of their reemployment. The question whether they can claim compensation for non-employment will again depend upon several circumstances including how far the liability to pay compensation is a personal liability or a liability which, in the event of the death of the previous manager, can be passed on to his heirs to be realized from the assets of the business in the hands of the heirs. All this will require further consideration and they cannot be decided by me in the writ petition. It will also require specific pleadings by both parties.

18. Learned Counsel, Sri Baluswami appearing for the respondent-management, referred me to the decision of Srinivasan, J. in *U. Vridhachalam v. State of Madras* 1966 II L.L.J. 908, where the learned Judge held that on the death of the petitioner the writ petition itself came to an end, and dismissed the writ petition. That case, however, dealt with a police constable who claimed that he had been wrongfully dismissed by the Government, his employer. Pending the writ petition the constable died. The learned Judge observed that the right which the constable claimed for reinstatement in view of the wrongful dismissal involved the continuance in service or otherwise which could not survive to the legal representatives. Even if the enquiry was to be held afresh for determining whether he was properly dismissed or not, the State would be placed in an anomalous position in not being able to continue the proceedings against the officer even if a writ should be granted. It was under such circumstances that the learned Judge dismissed the writ petition. In the present case too, it can be held that no remedy by way of reinstatement can be granted to the seven workmen by the labour court. But the finding that the seven workers concerned in this dispute were workmen as defined in the Act and that they have been wrongfully dismissed by the previous management without proper enquiry will necessarily lead to the result, that the matter must be restored to the file of the labour court for fresh disposal in regard to the case of these seven workers. It will be open to the labour court to take evidence, if necessary, about the alleged misconduct of these workers and come to a conclusion, if the labour court finds that the management itself has not conducted the necessary enquiry according to the proper procedure in that matter. Secondly, the labour court will have to consider how far any relief can be granted to these workers which will bind the legal representatives of the former manager after his death. The labour court will have also to take into account that the undertaking itself has ceased to exist. Reference was also made in this connexion to Section 18(3)(c) of the Industrial Disputes Act which states that the award of a labour court shall be binding, where the party referred to is an employer, on his heirs, successors or assigns in respect of the establishment to which the dispute relates. The legal implication of the provision in Section 18(3)(c) of the Act will also have to be considered,

namely, how far the heirs on record can be viewed as heirs in respect of the establishment, so as to be held bound by the award when the establishment itself has ceased to exist.

19. For the aforesaid reasons, I allow the writ petition and quash the order of the labour court so far as the first seven workman mentioned in the reference are concerned. It will be open to the labour court to restore the reference to its file and dispose it of according to law and in the light of the observations mentioned above.

20. In regard to the liability of the legal representatives for any relief, since the matter has arisen only after the filing of the present writ petition, it will be open to the concerned parties to adduce such evidence before the labour court as is necessary for deciding the question. There will be no order as to costs.