
(2001) 08 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 1130 of 1996

Management of Eagle Flasks Industries Limited

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 93 FLR 907 : (2002) 2 LLJ 973

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

Bench : Single Bench

Advocate : Akbar Ali Dhala, for the Appellant; S. Kumaraswamy, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the petitioner seeks to issue a writ of certiorari to quash the order of the first respondent in

I.D. No. 964 of 1992 dated December 12, 1994.

2. According to the petitioner/ management, they are involved in manufacturing of vacuum flasks and refills and the second respondent was

working as a turner from October 1, 1983, on a salary of Rs. 750. He was provided with all incidental benefits. The petitioner-firm used to

transfer the employees from one branch to another in accordance with the necessity arising in the respective branches. The second respondent

while joining the firm had accepted the condition that his services are liable to be transferred from one branch to another. He was, originally

engaged by the management as a trainee turner by order dated October 1, 1983. His services were subsequently confirmed and with effect from

October 1, 1984, he was appointed as turner. During 1991, efficient and trained

turners were required at the head office at Talegaon, Pune.

Taking into consideration the services of the second respondent, he was deputed to the head office, vide letter dated September 9, 1991. He was

required to report to duty at the transferred place on or before September 18, 1991. He was also informed that he would be designated as a

senior turner on an enhanced salary of Rs. 1,300 per month and that he would be provided with free accommodation. However, the second

respondent replied by saying that he was not in a position to obey the transfer order due to his personal reasons. He had stated that his testicles

had been removed and, therefore, he suffers from fever very often. His wife was a deaf person and his mother was suffering from tuberculosis and

facing the last days. His two children were studying and, therefore, he was not prepared to work in a place where he had no relations and he also

did not know the language there and, therefore, he may be permitted to work in the Madras factory. Therefore, the second respondent was

discharged from service with effect from September 25, 1991, on humanitarian grounds considering the physical conditions as represented by the

petitioner himself. The management also decided to pay retrenchment compensation of Rs. 3,000, pay equivalent to one month notice, ex-gratia

amount of Rs. 3,000, gratuity and other benefits. The order was duly communicated along with a demand draft for a sum of Rs. 10,414.35

towards the said amounts. Though the second respondent received the latter, he returned it with a request to the management to withdraw the

order of termination. The management expressed their inability to withdraw the order of termination,

3. Hence the second respondent approached the conciliation officer and as a result of the failure of the conciliation, the present industrial dispute

came to be referred to the Presiding Officer. The Presiding Officer, Labour Court, by virtue of the impugned order held that the termination of the

second respondent was not valid. Hence, the order of termination was set aside. Therefore, the management has come forward with the present

writ petition.

4. Learned counsel for the petitioner submits that the order of termination was passed only on humanitarian grounds considering the request and

representation of the second respondent himself as suffering from illness and

fever and the other reasons given by him, namely, that his wife was a deaf person and his mother was also suffering from tuberculosis. Learned counsel also, relies on the agreement executed by the second respondent and clause 10 is as follows:

10. Upon your confirmation, the company may terminate your services by giving one month's notice or salary in lieu of notice provided, however, that no notice or salary in lieu of notice will be given in case your services are terminated for any misconduct. Should you, however, desire to sever your connections with the company, after confirmation, it will be necessary for you to give one month's notice to the company of your intention to do so or allow the company to deduct one month's salary in lieu of notice, if such a notice is not given by you in advance.

5. Therefore, since the second respondent was found to be medically unfit on his own statement, the management has rightly invoked clause 10 and terminated his service.

6. On the other hand, the Labour Court has proceeded on a wrong basis and held that the order of termination on humanitarian point as expressed in exhibit M-5 cannot be taken into consideration. It was also erroneous on the part of the Labour Court who had assumed that such termination could be done only through proper check up by a doctor.

7. In the context of transfer, the right of the management to transfer, learned counsel for the petitioner relies on the judgment of the Supreme Court in *Madhuband Colliery v. Their Workmen* 1966 I LLJ 738.

8. Further reference is also made to the judgment of the Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay* and

Another, : in support of his contention that in the context of Section 25-F of the Industrial Disputes Act, there was no condition precedent that

Clause (c) should be complied with.

9. To the same effect is the judgment of the Punjab and Harayna High Court in *Om Prakash Vs. Presiding Officer, Industrial Tribunal-cum-Labour*

Court and Another, . I have considered all the submissions of learned counsel for the petitioner. The contention of the management that the second

respondent was unfit to work in Madras, has not been substantiated by any evidence. In fact, in the affidavit itself, the writ petitioner/ management

has stated that in his letter the petitioner has stated that he was prepared to work in Madras. Therefore, whatever the reasons which were given by

the second respondent for not joining at the transferred place, cannot be cited against him as proving the petitioner's inability to work in Madras.

In his letter dated September 14, 1991, all that the second respondent has stated is that he would not be able to move out of Madras due to

certain reasons. In the event of the management having come to the conclusion that he was medically unfit then the management should have

referred the worker to a properly constituted Medical Board, only after giving proper opportunity to the second respondent, and found the worker

medically unfit. Therefore, mere reliance placed on the letter of the second respondent to hold that he was medically unfit to be employed in

Madras, cannot be sustained.

10. Inasmuch as there is no dispute over the question of the right of the management to transfer the employees, there is no purpose in referring to

the judgment of the Supreme Court in *Madhuband Colliery v. Their Workmen* (supra)

11. Learned counsel also contended that the condition u/s 25-F had also been complied with and he would also state that the fact that notice has

not been served on him, cannot result in invalidating the order passed u/s 25-F. In the context the management having referred to Section 25-F, it

is seen that this is not a case of retrenchment. Section 2(oo) makes it clear that the expression "retrenchment" will not include termination of the

service of workman on the ground of continued ill-health. Therefore, in the present case, the termination of service having been effected on his ill-

health, the expression retrenchment cannot be resorted to by the management.

12. Therefore, I do not find any error in the order passed by the Labour Court and the same is confirmed.

13. In the result, the writ petition is dismissed. No costs.