

(1980) 10 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No's. 1242 and 1243 of 1978

Management of Enfield India Limited

APPELLANT

Vs

Second Additional Labour Court, Madras and Another

RESPONDENT

Date of Decision : 22-10-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(4)

Citation : (1981) 2 LLJ 287

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Judgement

1. The management of the Enfield India Limited, Madras is the petitioner in the above two writ petitions. W.P. No. 1243 of 1978 is to quash the

order dated 27-12-1977 passed by the Labour Court, Madras, while W.P. No. 1242 of 1978 is to quash the award passed by the Labour Court

on 24-1-1978. The facts of the case may be briefly set out as follows. One Mohan, the second respondent herein, was employed in Salvage

Department of the petitioner-management. On 24-3-1976 at about 3-15 p.m. when the Senior Engineer Mr. Rajagopal asked one workman

Jesudoss to carry out the work of filing of clutch plates Mohan intervened and shouted using vulgar language against the workers and the

management. The conduct of the second respondent prevented the work being completed. As a result the management served a show-cause

notice to Mohan calling upon him to show cause why disciplinary action should not be taken against him. A domestic enquiry followed. In the

domestic enquiry Mohan was given every opportunity to defend himself. The enquiry officer found the charge levelled against Mohan proved.

Having regard to the gravity of the misconduct proved against him and his past

record of service, the management dismissed him from service by its order dated 11-5-1976. Thereafter, the non-employment of Mohan was referred by the Government of Tamil Nadu for adjudication by the Labour Court, Madras. The Labour Court took the dispute on file as I.D. No. 154 of 1977. Before the Labour Court, the Secretary, Enfield Employees' Union filed a claim statement. The petitioner-management raised a contention that the dispute that was referred for adjudication by the Government was an individual dispute between Mohan and the management and the secretary, Enfield Employees' Union was not competent to file a claim statement.

The management also traversed the merits of the case. The Secretary, Enfield Employees' Union raised a contention in his claim statement that the very charge-sheet issued to Mohan, the second respondent by the management was invalid for the reason that the list of witness was not enclosed along with the charge sheet.

2. On the basis of these pleadings, the Labour Court raised three questions for preliminary decision :

(1) Whether the claim statement filed by the Secretary of the Union could not be taken cognizance of.

(2) Whether the charge-sheet was invalid.

(3) Whether the domestic enquiry was in any way vitiated.

On 27th December, 1977 the Labour Court passed an order that the dispute that has been referred for adjudication was raised by the union and,

therefore, the Secretary of the union was entitled to file the claim statement. Secondly, the Labour Court held that since the second respondent was

not made aware of the names of the witnesses proposed to be examined in the enquiry the domestic enquiry was invalid. Thereafter, the parties

agreed that the evidence of Rajagopal whose evidence was taken before the domestic enquiry could be treated as evidence before the Labour

Court. The Labour Court then considered the dispute on the merits and passed an award on 24-1-1973 holding that the non-employment of the

second respondent was not justified and that he was entitled to be reinstated in service with back wages, continuity of service and other attendant

benefits, if any. It is, in these circumstances, the above writ petitions have been filed.

3. Mr. Govind Swaminathan, the learned counsel for the petitioner-management raised the following contentions. The Secretary, Enfield

Employees' Union was not competent to file a claim statement before the Labour Court. The dispute that was referred by the Government was not

a collective dispute between the employees of the management and the management. What was referred by the Government for adjudication by

the Labour Court was an individual dispute, viz., the non-employment of the workman, Mohan by the management. In the circumstance, the

Secretary, Enfield Employees' Union was not a party to the industrial dispute and as such was not competent to file a claim statement before the

Labour Court. The party was the workman Mohan and he ought to have filed his claim statement. The learned counsel further contended that the

competency or the right of the union to file a claim statement was important from the reason that if the party to the dispute before the Labour Court

was to be treated as the union it would have been open to the management to have raised the contention that the union was not competent to

espouse the cause of the dismissed workman as a substantial number of workmen of the management did not espouse the cause of union. In the

light of the specific order of reference referring an individual dispute regarding the non-employment of Mohan for adjudication by the Labour

Court, the management was effectively prevented from raising the contention that the union was not competent to file the claim statement.

Secondly, the learned counsel challenged the award on the merits.

4. Mr. Fenn Walter, the learned counsel for the second respondent contended that the Enfield Employees' Union, from the very commencement of

the dismissal of the workman Mohan, had espoused his cause. It was only the union that appeared before the conciliation officer and the reference

itself was made at the instance of the union. Further, a copy of the order of reference had been marked to Secretary, Enfield Employees Union.

This itself would show according to Mr. T. Fenn Walter that it was only the union that had raised the industrial dispute regarding the non-

employment of the second respondent Mohan. The reference to the workman Mohan in the order of reference as if the dispute is between the

workman Mohan and the management must be construed to be a typographical error. What was really referred to for adjudication, according to

Mr. T. Fenn Walter, was the dispute between the Union and the Management. The learned counsel further argued that the parties had understood

the dispute to be one which arose between the union and the management. Mr. Fenn Walter further stressed the point that nothing prevented the

management from raising the contention before the Labour Court that the union which had filed the claim statement was not competent to espouse

the cause of Mohan by reason of the fact that it did not command the support of the substantial number of workmen.

5. The point for determination is whether the dispute that was referred by the Government for adjudication by the Labour Court was a collective

dispute between the union and the management or was only an individual dispute between Mohan, the workman and the Management. The order

of reference reads as follows :

Where as the Government are of opinion that an industrial dispute has arisen between the workman Thiru Mohan and the Management of Enfield

India Limited, Madras in respect of matters mentioned in the Annexure to this order and whereas in the opinion of the Governor of Tamil Nadu, it

is necessary to refer the said dispute for adjudication. Now, therefore, in exercise of the powers conferred by S. 10(1)(c) of the Industrial Disputes

Act, 1947 the Governor of Tamil Nadu hereby directs that the said dispute be referred for adjudication to the Labour Court, Madras"".

A copy of this has been marked to the Secretary, Enfield Labour Union, Tiruvottiyur, Madras. A reading of the order of reference on the face of it

discloses that the dispute that has been referred for adjudication by the Labour Court is the dispute between the workman Mohan and the

management as regards his non-employment. It is in view of the language used in the order of reference Mr. Govind Swaminathan the learned

counsel for the management contended that it was clear that the Government intended to refer only the individual dispute between the workman

Mohan and the management for adjudication by the Court. The Government did not refer, as could be seen from the very face of the order any

collective dispute between the workman or the union and the management. In the circumstances, the parties to the dispute before the Labour Court

were only the workman Mohan and the management. The union was not a party to the dispute and consequently was not competent to file a claim

statement. The union could have represented the workman Mohan before the Labour Court just as the management was represented by counsel.

In this connection the learned counsel cited the decision in *Kalaimagal Group of Newspapers v. Labour Court, Madras, 1975 47F.J.R.301*.

6. Section 10(4) of the Industrial Disputes Act states :

Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the

appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case

may be shall confine its adjudication to those points and matters incidental thereto.

This section enjoins the Labour Court to confine its adjudication to the points of dispute referred and to matters incidental thereto. This only means

that the Labour Court is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned

and anything which is incidental thereto. However, inaccuracy of language employed in the order of reference does not always make any difference

to the jurisdiction of the Labour Court to proceed with the reference and adjudicate upon it as the Labour Court can interpret and find out the real

meaning of an order of reference as it stands. Toward it differently what S. 10(4) means is that parties cannot be allowed to challenge the very

basis of the order of reference.

7. In *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, Gajendragadkar, J. (as he then was)

observed as follows :

Since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under S. 10 is limited by S. 10(4) to the points

specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference

carefully and the question which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or

controversy. An order of reference hastily drawn or drawn in a casual manner often give rise to unnecessary disputes and thereby prolongs the life

of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must

attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably.

8. In *Minimax, Ltd. Vs. Its workmen and Another*, it has been held that the Tribunal not only has the power but a duty is cast on it to find out

what was the real dispute which was referred to it and to decide it and not to throw it out on a mere technicality.

9. It is in the light of the above decisions the order of reference made by the Government of Tamil Nadu has to be construed. In this particular

case, the charge-sheet was served on the workman Mohan on 25-2-1976 and he was placed on suspension from that date. Even at that state the

union seems to have intervened on behalf of the workman Mohan as seen from the letter dated 30-3-1976 addressed by the management to the

workman. The letter states that on the special request made by the President of the Enfield Employees' Union the suspension against the workman

had been lifted from 1-4-1976. On the completion of the enquiry the workman was dismissed from service on 11-5-1976. On 14-5-1976 the

Secretary of the Enfield Employees Union wrote a letter to the management calling upon the management to reinstate the workman Mohan. On 3-

7-1976 the Secretary of the union wrote a letter to the Labour Officer, Madras-4 complaining against the dismissal of Mohan, the workman and

calling upon the Labour Officer to intervene, take up the dispute and do the needful. It is also seen that the secretary of the union filed a statement

under Rule 24 of the Madras Industrial Disputes Rules, 1958, before the Labour Officer. The letters dated 14-5-1976 and 3-7-1976 have been

marked as Exts. W. 2 and W. 3 and they disclose the fact that right from the commencement of the suspension of the workman Mohan by the

management, it is the union that had taken up the cause of Mohan. There is absolutely no record to show that it was Mohan who raised the dispute

by calling upon the management to reinstate him. It is also not dispute that it is the union that moved the Government for referring the dispute for

adjudication by the Labour Court. There is the further fact that a copy of the order of reference is only marked by the Government to the union

and not to the workman Mohan. I am, therefore, of the view that the dispute that has been really referred for adjudication is a dispute between the

workmen of the management represented by the union and the management. The facts of this case reveal that throughout the management was only

confronted with the union on the question of the non-employment of Mohan. In the circumstances, it is not as if the management was taken by surprise when the union filed a claim statement before the Labour Court. No doubt, as rightly contended by Mr. Govind Swaminathan it would be open to the Management to contend that the union was not competent to espouse the cause of the workman Mohan. But such a contention should have been raised by the Management before the Labour Court, but it did not do so. In view of my finding that the dispute is between the union and the management, the union was justified in filing the claim statement. I, therefore, overrule the contention union was not entitled to file the claim statement and that the order of the Labour Court dated 27-12-1977 is liable to be quashed.

10. The case cited by Mr. Govind Swaminathan in *Kalaimagal Group of Newspapers v. Labour Court, Madras*, 1975 47 F.J.R. 381 is

distinguishable on facts. In that case, one Venkataraman was employed as an associate editor of *Kannan*, a children's fortnightly, carried on by

Kalaimagal Group of Newspapers. Owing to financial loss the management decided to stop the publication of *Kannan*. This resulted in the

termination of the services of Venkataraman. He raised a dispute claiming that he was a working journalist coming within the scope of Central Act

No. 45 of 1955 and that the termination of his service was illegal. That dispute was referred by the State Government to the Labour Court under

S. 10 of the Industrial Disputes Act. In answer to the notice issued to Venkataraman by the Labour Court, the National Union of Journalists, Tamil

Nadu, Madras claiming to represent the working journalist of *Kalaimagal Group of Newspapers* filed a claim petition. The management took the

stand that the union had no locus standi to represent the employees under the management as none of them were members of the National Union of

Journalists and that the dispute referred to the Labour Court being an industrial dispute regarding the non-employment of a particular person, the

claim petition should be filed only by the individual concerned and not by the union which had no interest in the dispute. The Labour Court held the

union was entitled to file a claim statement on behalf of Venkataraman as the union had espoused the cause of the workman. Against that the

management filed a writ petition. Ramanujam, J., held that there was no evidence that as to whether there was any union of the working journalists

in the petitioner-management and whether an appreciable number of them had taken up the case of the individual before the management. The learned Judge further held that the initial dispute was raised by the workman regarding his non-employment. On this view, the learned Judge came to the conclusion that the union was not competent to file a claim statement as it must be deemed to be not a party to the dispute. As already stated, the facts of the case before Ramanujam. J, are not on all fours with the facts of the case on hand. In the present case, it was the union which took up the cause of the workman from the stage of his suspension, with the management. Then the union requested the Labour officer, Madras to intervene, take up the dispute and do the needful. Further, it was the union that moved the Government for referring the dispute for adjudication by the Labour Court. At no point of time the workman raised any dispute regarding his non-employment. Therefore, the decision on in Kalaimagal Group of Newspapers v. Labour Court, Madras 1975 47 F.J.R.391, is not of help to the learned counsel for the petitioner.

11. It was not seriously argued that the failure to give a list of witnesses along with the charge-memo did not vitiate the domestic enquiry. As pointed out by the Labour Court Standing Order 16(1)(a) enjoined the management to append a list of witnesses to the charge-sheet to be served on the workman. It is admitted that such a list of witnesses was not appended to the charge-sheet that was served on the workman. In the circumstances, I have no hesitation to agree with the Labour Court that the failure to comply with the provisions of the Standing Order 16(1)(a) vitiated the domestic enquiry. I, therefore, uphold the order passed by the Labour Court on 27-12-1977.

12. The next question for consideration is whether the award passed by the Labour Court on 24th January, 1978 can be sustained. I have already stated while narrating the facts of the case that the evidence of Rajagopal which was taken in the domestic enquiry was agreed to be treated as evidence before the Labour Court Besides further evidence was let in. On an appreciation of the evidence in the case the Labour Court has specifically stated that it was difficult to accept the solitary evidence of Rajagopal whose evidence has not been corroborated by any other evidence. The Labour Court has, on an overall appreciation of the evidence in the case, come to the conclusion that the charges against the

workman had not been established. In these circumstances, the Labour Court ordered the reinstatement of the workman Mohan with back wages, continuity of service and other attendant benefits. I do not find any justification for interference with the award of the Labour Court which is purely based on a consideration of the evidence in the case. Both the writ petitions fail and are dismissed. There will be no order as to costs.