

(2012) 01 MAD CK 0302

In the Madras High Court

Case No : Writ Petition No's. 3757 of 2007 and 6315 of 2008

Management of Velan Textiles Pvt. Ltd. and Another, Erode
District and Others

APPELLANT

Vs

Presiding Officer, Labour Court, Salem and Others

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 2(s)

Citation : (2012) 4 LLJ 102

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ravindran for T.S. Gopalan and Co. in W.P. No. 3757/2007 and S. Vaidyanathan in W.P. No. 6315/2008, for the Appellant; S. Vaidyanathan in W.P. No. 3757/2007 and S. Ravindran for T.S. Gopalan and Co. in W.P. No. 6315/2008, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Chandru

1. Heard both sides. Both the writ petitions challenges the very same award dated May 11, 2004 passed by the Labour Court, Salem, in I.D. No. 124 of 1997. In the first writ petition viz. W.P. No. 3757 of 2007 filed by the Management of Velan Textile Mills Private Limited, the challenge is to the award in so far as it granted Rs. 20,000/- to each of the 66 workers as compensation.

2. In the second writ petition viz. W.P. No. 6315 of 2008 by Kangeyam Taluk Textiles and Podhu Thozhilalar Sangam, the challenge is to a portion of the award, which denied the benefit of reinstatement with back wages and continuity of service.

3. The first writ petition viz.. W.P. No. 3757 of 2007 was admitted on February 3, 2007 and an interim stay was also granted in M.P. No. 1 of 2007. The second writ petition viz. W.P. No. 6315 of 2008 was admitted on March 13, 2008.

4. For the sake of convenience, the parties are referred to as "Management" and "workmen" as the case may be.

5. It is the stand of the workmen that the Management was established in the year 1991 and they engaged workers as apprentices, in the place of regular workmen. Even though they were labelled as apprentices, no apprenticeship training was given to them. They were given the benefit of ESI and PF. In the absence of any Certified Standing Orders, the model Standing Orders framed by the State Government are applicable to them. The Management increased the workload on August 24, 1994 without any notice and they prevented the workers, as if they refused the increased workload. This is nothing but lock out, which was followed by a strike by the workmen.

6. The Trade Union of the workmen raised a dispute before the Labour Officer, Erode. Even during the pendency of the conciliation proceedings challenging the lock out, the services of the workmen were terminated illegally. When they raised a dispute regarding their non-employment, the State Government, by G.O.(D) No. 589, Labour and Employment Department, dated July 3, 1996 declined to refer the dispute.

7. Subsequently, a reconciliation petition was sent by the Trade Union to the State Government and the State Government, on consideration of the reconciliation petition, issued orders in G.O.(D) No. 689, Labour and Employment Department, dated August 1, 1997, referring the dispute of 66 workers' demand for employment. The dispute was referred to for adjudication by the Labour Court, Salem.

8. The Labour Court, Salem registered the dispute as I.D. No. 124 of 1997 and issued notice to the parties. The Trade Union of the workmen filed a claim statement dated December 12, 1997. The Management filed a counter statement dated April 6, 1998.

9. Before the Labour Court, on the side of the workmen, 3 witnesses namely N. Thangavel, Ramasamy and Anbarasu were examined as P.W. 1, 2 and 3 and on their side, 7 documents were filed and marked as Exhibits P-1 to P-7. On the side of the Management, R. Manohar and Annadurai were examined as R.W. 1 and R.W. 2 and on their side, 22 documents were filed and marked as Exhibits R-1 to R-22.

10. The Labour Court, Salem held that the workmen, who were appointed in the name of apprentices are also workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It also held that an apprentice, who is engaged for a fixed period, is not entitled for automatic absorption. At the same time, the termination of the services of the apprentices cannot be said to be not a retrenchment within the meaning of Section 2(oo)(bb) of the Industrial Disputes Act. If a person is doing a regular work, he could not be labelled as an apprentice. It is not the nomenclature which matters in determining the status of the workmen. The Labour Court held that when the workmen were demanded

certain benefits, it was the Management, which refused to grant the benefit. The strike indulged by the workers was only in the form of demonstration. Since the strike was followed by a lock out, it cannot be called as illegal and for terminating the services of the workmen, no notice was given to them, even though such a notice is contemplated under the apprenticeship scheme. Therefore, the Labour Court held that the termination was not valid. But at the same time, during the pendency of the dispute, there might be chances of other workers being employed and therefore, this is not a fit case where any reinstatement can be ordered. Hence, considering the overall situation, the Labour Court directed payment of Rs. 20,000/- to each of the workers as compensation in lieu of reinstatement. But the order of reference itself contend that the workmen have put in services ranging from two to three years and their daily wages was around Rs. 25/-.

11. Since the Labour Court held that they are workmen within the meaning of Section 2(s) and the termination do not come within the explanation u/s 2(oo) of the Industrial Disputes Act, it cannot be said that the awarding of compensation is on the high side. At the same time, it must be noted that the dispute relating to non-employment started somewhere in the year 1994 and after the first reference was refused, the second reference was given and the dispute was taken on file as I.D. No. 124 of 1997 and the Labour Court took seven years to conclude the industrial dispute. Even the Management did not file the writ petition within a reasonable time and chose to file only after three years and the Management has not given any single reason for their inordinate delay in approaching this Court. On the ground of delay itself, the writ petition filed by the Management in W.P. No. 3757 of 2007 is liable to be rejected. At the same time, it is only after getting notice on the Management's writ petition, the workmen have come forward to file cross writ petition in W.P. No. 6315 of 2008 after a period of four years from the date of the award, mainly as a counterblast to the case filed by the Management. Hence, this Court is not inclined to entertain both the writ petitions.

12. Though in the normal circumstances, delay in raising a dispute cannot invalidate a reference, but at the same time, if it was an adverse award, which was not challenged within a reasonable time, this is a fit case for refusing to grant the relief. In the present case, admittedly, the petitioners have put in two to three years of service, that too 17 years before. At this stage, this Court cannot modify the award by directing reinstatement, even if they had good case on merits. Further, in case of an employee, who is not under regular service, the Court can order compensation.

13. The Honourable Supreme Court in its judgment in Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, has upheld the award granting compensation both on account of the employees not having regular employment as well as on account of the fact that the dispute was very old. Under the said circumstances, both the writ petitions stand dismissed. No

costs.