

(2000) 05 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 3293 of 1993

Management, Sri Balasubramanian Lorry Service

APPELLANT

Vs

Paramasiva Nadar and Another

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2001) 3 LLJ 575

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The petitioner management has filed this writ petition praying to issue a writ of certiorari calling for the records of the second respondent relating to the award dated August 5, 1992 made in C.P. No. 440 of 1989 and to quash the same.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the petitioner management was a proprietary concern and the first respondent herein is an ex-employee of the petitioner concern; that while he was working as an attender in the year 1978, he was terminated for want of vacancy that against the order of termination, he filed a petition under the provisions of the Tamil Nadu Shops and Establishments Act as per the proceeding in the TNSC. No. 26 of 1978 on the file of Additional Commissioner for Workmen's Compensation, Madurai; that the learned Commissioner passed an award reinstating the first respondent in the service of the petitioner as per its order dated July 13, 1990 and against this order, the petitioner filed 1 a writ petition in W.P. No. 3258 of 1981 and the same was disposed of on March 23, 1988; that the then proprietor Kanniappa Nadar passed away on March 24, 1988 leaving behind his wife, sons and daughters as his legal heirs who were not aware of the proceedings of the writ petition and were not in a position to take steps prefer an appeal challenging the order of the writ petition.

3. The petitioner would further submit that taking advantage of the order of reinstatement passed by the first respondent claiming the back wages to the tune of Rs. 35,000 with 12 per cent interest, filed a petition u/s 33-C(2) of the Industrial Disputes Act in C.P.No. 440 of 1989 on the file of the second respondent and in spite of having contended that the sole proprietor of the petitioner concern died, the second respondent on an erroneous conclusion arrived at, allowed the petition awarding a sum of Rs. 17,250 towards the arrears from the date of termination by the award dated August 5, 1992; that aggrieved by the said order of the second respondent, the petitioner alleging that he is having no other effective alternate remedy, has come forward to file this writ petition on certain grounds as brought forth in the writ petition.

4. In the counter-affidavit filed on behalf of the first respondent, it would be submitted that the termination for want of vacancy is incorrect; that the termination has now been held void ab initio and continues to be in the employment of the petitioner establishment; that besides not admitting the allegation that the Regional Transport Authority has cancelled permit granted to the vehicle and concern is permanently closed. It would further be contended that the liability of the petitioner in respect of his claim is not absolute; that the second respondent has not committed any error of law or on the fact in awarding a sum of Rs. 17,250 towards arrears from the date of termination; that no sufficient grounds are alleged in the writ petition for interference to be made into the award passed nor is there any error of jurisdiction nor material defects, nor is there any procedural failure or illegality involved in the award passed; that the writ petitioner has challenged that award on four grounds, they are: (i) The second respondent has no jurisdiction to compute the monetary benefit u/s 33-C(2) of the Industrial Disputes Act for the reason that in the instant case there has been no adjudication about the termination of employment under the Industrial Disputes Act. What all has been done has taken place under the Shops and Establishments Act. Hence the Court has no jurisdiction; (ii) the Court has no jurisdiction to fix the monetary benefit under the Minimum Wages Act; (hi) the establishment is one under Motor Transport Workers Act and hence the jurisdiction of the Labour Court u/s 33-C(2) cannot be invoked; and (iv) establishment has been wound up and therefore no order could be passed against the writ petitioner.

5. The further averments of the counter are that all the above four grounds are unsustainable in law; that the provision u/s 33-C(2) could be invoked by workman in the facts and circumstances of the case as it has been conclusively held by the Court, that a workman whose employment is illegally terminated and who has obtained relief in respect thereof under the Shops and Establishments Act will have his right to move the Labour Court u/s 33-C(2) of the Industrial Disputes Act to have his monetary benefit duly computed; that so far as the second ground is concerned, the Court acting u/s 33-C(2) can take into consideration the statutory provisions under the Minimum Wages Act as concluded by several earlier judgments of the upper fora of law. Thirdly, the

workman under Motor Transport Workers Act is equally a workman for the purpose of Industrial Disputes Act as well as Tamil Nadu Shops and Establishments Act; that even assuming that the establishment has been closed, it would not absolve of the responsibility or from its liability towards the workmen, that it would thus be seen that the writ petition has no merit at all and the same is liable to be dismissed.

6. During arguments, the learned counsel appearing for the petitioner would submit that the petitioner management is a Lorry Service registered under Motor Transport Workers Act, 1961; that the first respondent was working as an attender and he got terminated in the year 1980; that he filed the case u/s 41 of the Tamil Nadu Shops and Establishments Act (hereinafter referred to as the "Act") before the competent authority in TNSC No. 26 of 1978; that the competent authority set aside the termination order dated July 13, 1990; that W.P.No. 3258 of 1981 was filed against the order of the competent authority and the same got dismissed on March 23, 1988; that the proprietor died on March 24, 1988 and the company was wound up in December, 1988; that subsequently, the first respondent filed an application in C.P.No. 440 of 1989 on the file of the second respondent, Additional Labour Court claiming back wages and the same was contested by the legal representatives of the deceased petitioner; that the Labour Court awarded a sum of Rs. 17,250 with 12 per cent interest from the date of reinstatement that is from July 13, 1980; that aggrieved of the said order, the petitioner management has come forward to file the writ petition in hand.

7. The learned counsel would further submit that it is only the enforcement of reinstatement passed by the Additional Commissioner for Workmen's Compensation, Madurai. Now the point is whether the Labour Court has jurisdiction to award back wages in terms of money pursuant to the award passed by the Additional Commissioner for Workmen's Compensation under the Act. At this juncture, the learned counsel would cite a judgment delivered in B. V. Bus Service v. Labour Court, Guntur 1977 LI.C. 320, wherein citing an earlier judgment reported in A.B. Saleem v. The Labour Court, Hyderabad 1973 (2) A.P.L.J. (S.N.) 40, with reference to Shops and Establishments Act, considering a similar argument, applied that rule in generalia specialibus non derogant, and held:

"The Labour Court has no jurisdiction to go into the claim set up by the employees in the shops and since the claims come under the Shops and Establishments Act, the claims ought to be heard by the judicial authority and not by the Labour Court. Claim in regard to wages or gratuity arising under the Act can be got decided only before the Judicial Authority constituted by the Government u/s 43 of the Act (Shops and Establishments Act). The judicial authority so constituted has exclusive jurisdiction to decide the claims arising under the Act and since the Act is self contained Act and provides its own machinery for disposal of the claims, it must follow that the judicial authority is

an exclusive authority and all claims arising under the Act must have to be filed only before the said authority and no other. By necessary implication it excludes the jurisdiction of a Labour Court to hear an application u/s 33-C(2) arising under the provisions of the Shops and Establishments Act."

Therefore, on the parity of reasoning, I am of the view that the petition u/s 33-C(2) is not maintainable and the employee has to seek relief before the forum under the Payment of Wages Act, 1936."

Citing the above judgment, the learned counsel would exhort that the Tamil Nadu Shops and Establishments Act provides for enforcement since being a self-contained one wherein the Enforcing Authority is the Additional Commissioner; that the first respondent cannot switch over to enforce under the Industrial Disputes Act.

8. On the part of the first respondent, the learned counsel appearing on his behalf would cite a judgment that of a Division Bench of this Court delivered in *Raghavachari v. Madras Printers and Lithographers Association* 1980 I LLJ 273 wherein it is held as follows:

"The appellant's services were terminated on his applying for two months' continuous leave for medical reasons. The employer in the order stated that the concerned post could not be kept vacant even for a short period. He appealed to the authority under the Madras Shops and Establishments Act challenging the order misconstruing it to be an order of dismissal. The proceedings concluded with the authority holding that the termination was for a just cause and in the circumstances there could be no question of awarding benefits under other laws. His subsequent application u/s 33-C(2), Industrial Disputes Act for retrenchment compensation u/s 25-F(b) was held not barred by the earlier proceeding under the Madras Act and that retrenchment compensation ought to be computed and paid in the event of the two conditions laid were satisfied. W.P. No. 1334 of 1972 dated August 27, 1973 (Mad.) Reversed. (Paras 3 and 4)."

The next judgment cited by the learned counsel is also that of a Division Bench of this Court delivered in *E. Senthilkumar v. The Registrar of Co-operative Societies* 1996 III LLJ (Suppl) 492 wherein it is held as follows:

"The petitioner has filed an application u/s 33-C(2) of the Industrial Disputes Act for back wages. It is, at this stage, that the direction of the Registrar of Cooperative Societies, the impugned order dated April 28, 1993 has been passed, permitting reinstatement on the condition that the petitioner undertakes not to claim the back wages."

"I have absolutely no doubt, in my mind, the prayers sought for are justified, consequently direct the second respondent to reinstate the petitioner within two weeks from today, without insisting on any conditions. The application u/s 33-C(2) of the Act can be proceeded with in accordance with law."

"The petitioner filed C.P.No. 967 of 1991 before the Principal Labour Court,

Madras claiming back wages for the period from June 1, 1980 to May 31, 1991 u/s 33-C(2) of the Industrial Disputes Act, 1947 and the same is pending."

We only make it clear that this payment is only subject to the determination to be made by the Principal Labour Court, Madras in C.P.No. 967 of 1991."

9. A fair assessment of the facts and circumstances as pleaded by parties and having regard to the materials placed on record and upon hearing the learned counsel for both and on a over all consideration of the whole case is that the first respondent once an employee of the petitioner got terminated from service, testifying the validity of which, he filed an application in TNSC No. 26 of 1978 under the relevant provisions of the Act on the file of the Additional Commissioner for Workmen's Compensation, Madurai; that the learned Commissioner passed an award reinstating the first respondent in service of the petitioner as per his order dated July 13, 1990 challenging which, the petitioner filed a writ petition in W.P.3258 of 1981 and the same got disposed of on March 23, 1988; that on the very next day that was on March 24, 1988, the proprietor of the petitioner viz., Kanniappa Nadar passed away and his legal representatives took no steps to prefer an appeal, etc.; that while so, the first respondent filed a petition u/s 33-C(2) under the Industrial Disputes Act in C.P. No. 440 of 1989 on the file of the second respondent Labour Court claiming back wages to the tune of Rs. 35,000 with 12 per cent interest and the second respondent also concluded allowing the petition awarding a sum of Rs. 17,250 towards the arrears of payment from the date of termination by his award dated August 5, 1992 which is under challenge in the writ petition.

10. On the part of the petitioner management, their grounds of attack are four cornered, the first one being that the second respondent has no jurisdiction to compute the monetary benefit u/s 33-C(2) of the Industrial Disputes Act. Since there was no adjudication about the termination of employment under the I.D. Act, it is an award passed by the competent authority under the Tamil Nadu Shops and Establishments Act and the said Acts being self-contained one, the relief is enshrined there itself and that either for execution or for other connected reliefs, the first respondent could not resort to I.D. Act. In support of this contention, the judgment of the single Judge of the Andhra Pradesh High Court referred to the case reported in B. V. Bus Service v. Labour Court, Guntur (supra) wherein the contentions of the petitioner management have been confirmed in a more clear term.

11. But at the same time, two judgments both of the Division Bench of this Court would be cited on behalf of the first respondent, the first one reported in Raghavachari v. Madras Printers and Lithographers Association (supra) and the second one reported in E. Senthilkumar v. The Registrar of Co-operative Societies (supra), the first judgment cited above is concerned, it has been held that subsequent application u/s 33-C(2) of the Industrial Disputes Act for retrenchment compensation u/s 25-F(b) was held not barred by the earlier proceeding under the Madras Shops and Establishments Act. It is ultimately held

that "we find that the Section 25-F(b) of the I.D. Act and that the petition u/s 33-C(2) of the Act is maintainable." This is exactly a case of similar facts and circumstances as that of the case in hand and even in this judgment cited, the initial order had been passed under the Tamil Nadu Shops and Establishments Act and the compensation computed u/s 25-F(b) therein on an application filed u/s 33-C(2) of the Industrial Disputes Act has been held perfectly valid by the Division Bench of this Court.

12. Also in the other Division Bench judgment cited from E. Senthilkumar v. The Registrar of Co-operative Societies (supra), wherein it has been held that an application filed in so far as they relate to the denial of back wages filed u/s 33-C(2) of the Industrial Disputes Act based on a direction of the Registrar of Co-operative Societies permitting reinstatement, the prayers of the writ petition therein was justified ultimately holding that "an application u/s 33-C(2) of the Act can be proceeded with in accordance with law."

13. Since the Division Benches of the Court have concluded in the above manner, the judgment of the Andhra Pradesh High Court cited on the part of the petitioner management in spite of being to the point in favour of the petitioner, still the later judgments cited on the part of the first respondent both being more or less similar to the facts that are involved in the case in hand they are always preferable. In such event, it must be told that this point has to be decided against the petitioner.

14. The next point raised on the part of the petitioner is that the Court has no jurisdiction to fix the monetary benefit under the Minimum Wages Act. So far as this point is concerned, during arguments, the petitioner did not give credence to, nor any materials supplied to establish the same. The third point urged on the part of the petitioner is that the establishment being one registered under the Motor Transport Workers Act, the jurisdiction of the Labour Court u/s 33-C(2) cannot be invoked is also fallacious in the sense that whatever be the nature of activity of the establishment, if there is a relationship of an employer and employee, the provisions of the I.D. Act can be invoked and absolutely there is no bar for having recourse to the I.D. Act.

15. The last point urged on the part of the petitioner is that the establishment has been wound up and, therefore, no order could be passed against the writ petitioner is also not sustainable. The establishment might have been wound up, but at the same time, the rights of the first respondent do not extinguish. Once the rights are declared even in the event that the establishment is said to have been wound up, the first respondent becomes entitled to enforce the rights in the manner provided for under law in such circumstances. Hence, at this score also, the petitioner does not succeed.

16. In short, the petitioner has thoroughly failed to establish the case before this judicial forum especially relating to the award dated August 5, 1992 made in C.P.No. 440 of 1989 by the second respondent Additional Labour Court, Madurai,

since nothing that is required for this Court establishing either the impugned order has been inconsistent or infirm or suffering from patent errors of law or perversity in approach or the same having been passed without opportunity for the petitioner to be heard thus in violation of the principles of natural justice, etc. None of these legal requirements has been either brought forth or established on the part of the petitioner so as to warrant the interference of this Court. Therefore, the interference as sought for by the petitioner in this writ petition is unnecessary and uncalled for.

17. In result, the above writ petition fails and the same is dismissed. No costs.

18. Consequently, W.M.P.No. 5218 of 1993 is also dismissed.