
(2000) 11 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 10919 of 2000 and W.M.P. No's. 15671 and 27942 of 2000

Mercury Manufacturing Co. Ltd.

APPELLANT

Vs

Joint Commissioner of Labour and Others

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 2A

Citation : (2001) 1 LLJ 1214

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : A.L. Somayaji, for T.S. Gopalan and Co, for the Appellant; R. Kamatchi Sunderasan, for Balan Haridoss and V. Chandrakanth, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—This writ petitioner seeks for the issuance of the writ of prohibition prohibiting the first respondent from holding

conciliation in respect of a dispute purported to have been raised by the respondents 2 to 85 u/s 2-A of the Industrial Disputes Act, 1947.

2. At the outset I wish to record the statement of Mr. Kamatchi Sunderasan, learned counsel appearing for the respondents 5, 11, 12, 16, 17, 19,

21, 24, 30, 31, 37, 38, 39, 44, 55, 56, 60, 72 and 77 who would state that in respect of those respondents disputes have already been withdrawn

and that they have already reported for duty.

3 The brief facts are that pursuant to a long term settlement dated March 30, 1998, there were certain requirements to be fulfilled by the workmen

in the matter of production, that when the management insisted for reaching the norms fixed under the settlement and when the workmen failed to

fulfil the norms, the petitioner wanted an undertaking to be given by the respondents 2 to 85 and in that situation the respondents 2 to 85

approached the first respondent by way of a dispute u/s 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") alleging

denial of employment from May 13, 2000. By reply dated June 6, 2000 the petitioner came forward with the categorical statement that the

services of the respondents 2 to 85 have not been terminated and therefore there is no scope for raising an industrial dispute u/s 2-A of the Act. It

transpires that even thereafter the first respondent continued to post the dispute for hearing for the purpose of conciliating between the parties. It

was in those circumstances, the petitioner has come forward with this writ petition seeking the issuance of a writ of prohibition on the ground that

there is no dispute existing as on date as claimed by respondents 2 to 85.

4. The learned counsel for the petitioner by referring to the settlement and the subsequent developments including the dispute raised by each of the

84 individuals before the first respondent as well as the reply placed before the first respondent at the instance of the petitioner, contended that

whatever may be the grievance of the workmen relating to the demand for the written undertaking of the petitioner for their reporting for duty, there

could be no scope for holding that on that score there was a denial of employment to the respondents 2 to 85 and in such circumstances the

dispute ought not to have been entertained at all by the first respondent. The learned counsel also referred to the anticipatory bail application filed

by 12 of the respondents out of 85 respondents wherein in the opening para it is stated that:

The petitioners are all workers in Mercury company in MEPZ, Tambaram. They are all members of the Union of the company. There is dispute

between the workers and the company and about 100 workers are not attending the company and are on strike"".

and submitted that being the real factual position, the entertainment of the dispute by the first "respondent and further proceedings on that basis

would be wholly illegal.

5. As against the said submission Mr. Chandrakanth the learned counsel for the respondents would contend that whatever may be the reason for

the denial of employment, either, whether it was at the instance of the petitioner

or at the instance of the respondents this is a matter to be adjudicated upon by the appropriate forum and therefore the issuance of writ, particularly in the nature of prohibitory writ would be premature at this stage. According to the learned counsel, the whole issue relating to denial of employment as on May 13, 2000 having been arisen at the instance of the petitioner by virtue of the insistence for a written undertaking from the respondents/ workmen, there is every justification for the first respondent in having entertained the dispute as one falling within the scope of Section 12(1) of the Industrial Disputes Act. The learned counsel would therefore submit the prayer of the writ petitioner should not be countenanced.

6. Having perused the materials and after hearing the learned counsel for either side, I am of the view that the plea of the petitioner, deserves acceptance for more than one reason. u/s 2-A of the Act, an individual workman is entitled to raise an industrial dispute in the event of the employee's dismissal, retrenchment or otherwise terminating the services of the individual workman. A close reading of the opening words of the said provision would show that for an individual workman to raise an industrial dispute u/s 2-A of the Act, there should be a termination of the services of the concerned workman. In the case on hand, as admitted by the petitioner and as disclosed in the reply filed before the first respondent as well as in the affidavit filed in support of this writ petition, it has been tacitly made clear that the services of none of the respondents 2 to 85 have been terminated. Further even as per version of twelve of the respondents as stated in their anticipatory bail application filed before this Court they are not attending to their jobs as they are on strike. It is claimed that hundred of the workmen are placed in a similar situation. All the above stated undisputed facts show that there was no termination of service of any of the respondents 2 to 85. Further fact that 22 out of 84 workmen having reported for duty as on this date strengthens the stand of the petitioner that there was no termination of service of any of the respondents 2 to 85.

7. If the stand of the respondents 2 to 4, 6 to 10, 13 to 15, 18, 20, 22, 23, 25 to 29, 32 to 36, 40 to 43, 45 to 54, 57 to 59, 61 to 71, 73 to 78 and 80 to 85 is countenanced, then it would only result in the pseudo non-

employment now stated to have arisen at their instance ultimately ending in a real non-employment of the workmen. Therefore while playing a responsible role of conciliation officer, the first respondent's duty is not to perpetuate or create a dispute by encouraging persons like that of the respondents 2 to 85 to pursue their disputes to its logical end knowing fully well that the said attempt of the workmen would not enure to their benefit but would only result in woeful consequences. The object of the enactment namely the Industrial Disputes Act is not to encourage frivolous and endless litigations but to promote industrial harmony and cordial relationship between the management and the workmen. The ambit and scope of the role of a conciliation officer, has got a definite purpose and intent. He cannot act in a mechanical way and open up a dispute the moment some petitions are presented before him. The first respondent herein, without realising that by entertaining the petition presented by respondents 2 to 85, he would only pave the way for the persons who are in service as on date to lose their employment by blindly encouraging their unmindful attempt of alleged denial of employment which was demonstrated to be not real. If the dispute is allowed to be pursued and the respondents are driven to go before adjudicating machinery, I am able to imagine the situation whereby the imprudent act of the first respondent, respondents 2 to 85 would be deprived of employment and livelihood to themselves by their own ill-advised conduct in raising an imaginary case of non-employment. Realising the above factor, I am of the view that this is a fit case where the issuance of the writ of prohibition is really warranted.

8. On an analysis of the various contentions raised on behalf of respondents 2 to 85, barring the 22 respondents I could see that the real controversy seems to be the one relating to the written undertaking said to have been insisted upon at the instance of the petitioner. Unfortunately, the dispute is not with regard to the justifiability or otherwise of the various conditions sought to be imposed at the instance of the petitioner by way of a written undertaking from the workmen concerned. Inasmuch as the dispute being one of denial of employment, and the factum of denial of employment having been found to be not in existence, there is absolutely no justification for the first respondent to entertain this dispute and proceed further.

9. It is always open to the affected; workmen to raise any specific dispute relating to the justifiability or otherwise of the undertaking insisted upon by the petitioner and to agitate the said issue before the appropriate forum, inasmuch as admittedly even as disclosed in the present dispute raised by them that they are members of a registered trade union. In the circumstances, as the very entertainment of the dispute by the first respondent being one not in consonance with the provisions of the Act, the first respondent cannot be permitted to proceed further with the said proceedings initiated by it. In this context, the learned counsel for the petitioner relied upon a judgment of the Bombay High Court reported in Association of Engineering Workers Vs. Permanent Magnets Ltd. and Others, dealing with the question relating to the jurisdiction of the Conciliation Officer. The learned Judge while relying upon the earlier judgment was pleased to hold that the conciliation officer should satisfy himself as to whether there is any genuine dispute at all and whether it is a matter in which he should undertake conciliation. Therefore, apparently based on the admitted factual position, when there is no industrial dispute, there could not be valid conciliation proceedings at the instance of the first respondent as disclosed in the case on hand. In my opinion, it would be a futile exercise for the first respondent if he has to proceed with the conciliation proceedings irrespective of the fact that there was no denial of employment as claimed by respondents 2 to 85. The learned counsel for the respondents would however rely upon a judgment reported in Minvaria Oppanda Thozhilalar Sangam Vs. State of Tamil Nadu and Others, and contend that while exercising powers in writ jurisdiction, such factual aspect should not be gone into to find out as to the existence or otherwise of the dispute. In paragraph 19 of the said judgment while dealing the case as to whether the concerned workmen had to be in 480 days of service in a period of two years and whether they should be absorbed in the place of those who have already been absorbed, His Lordship was pleased to hold that such an exercise is not possible in a writ petition and that at best it could be carried out in appropriate proceedings. I am afraid the said judgment is not applicable to the facts of the present case. As stated by me earlier in the case on hand going by the undisputed facts, it is apparent that the service of the respondents was never terminated and that being the starting point for the whole dispute and the said factum being proved to be not

in existence, I am fully convinced that there is no necessity for the first respondent to proceed further with the dispute. No costs. Consequently

W.M.P. Nos. 15671 and 27942 of 2000 are closed.

10. In view of the fact that there is no termination of services of any of the respondents, there should not be any impediment for the other

respondents also to report for duty as before.